

United States 10
Circuit Court of Appeals
For the Ninth Circuit.

SAN JOAQUIN VALLEY POULTRY PRO-
DUCERS ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United
States Board of Tax Appeals

FILED

OCT 9 - 1942

PAUL P. O'BRIEN,

CLERK



United States
Circuit Court of Appeals
For the Ninth Circuit.

SAN JOAQUIN VALLEY POULTRY PRO-
DUCERS ASSOCIATION,

Petitioner,

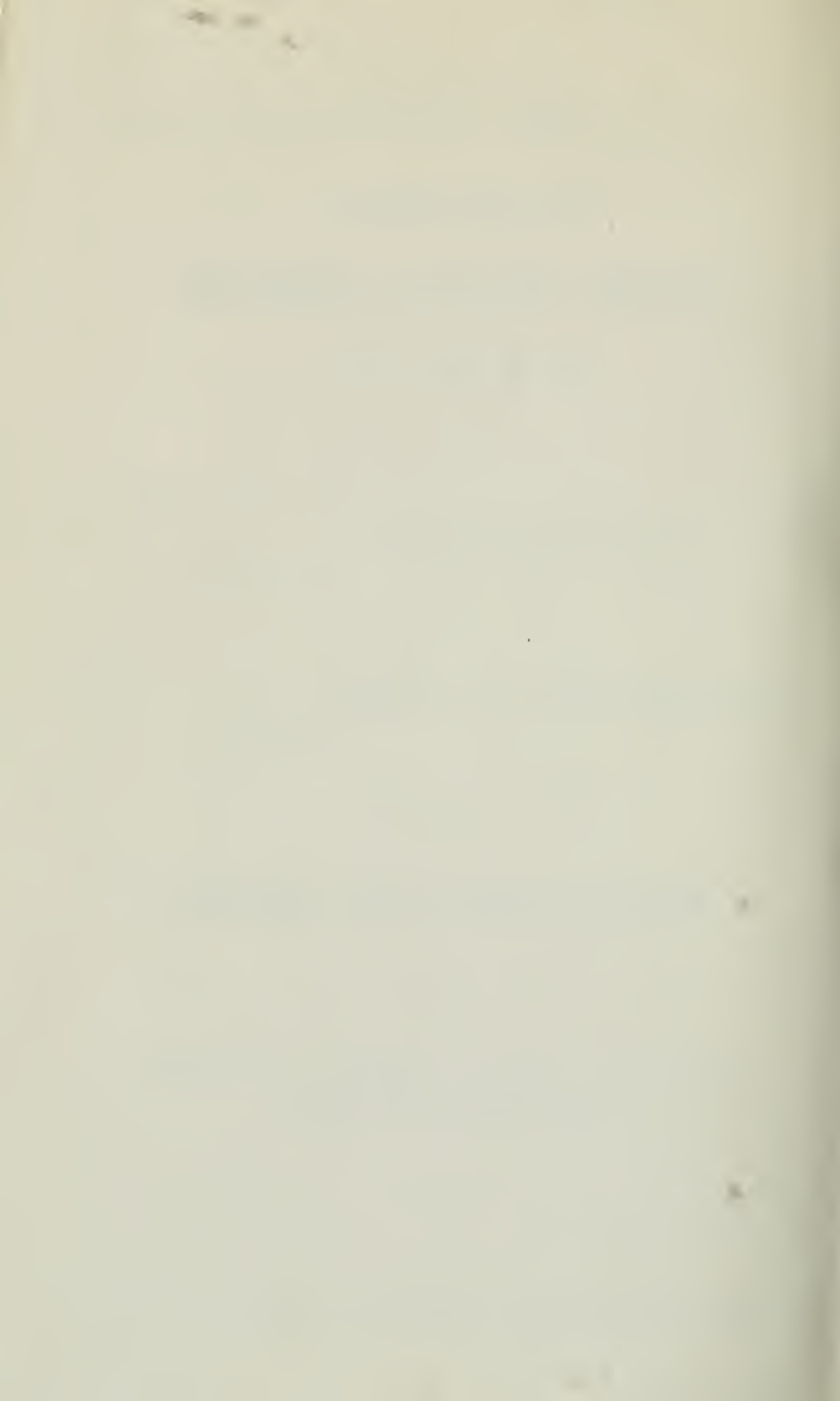
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COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

MILTON D. SAPIRO, Esq.

For Comm'r:

HARRY R. HORROW, Esq.

Docket No. 103408

SAN JOAQUIN VALLEY POULTRY PRO-
DUCERS ASSOCIATION,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1940

June 17—Petition received and filed. Taxpayer notified. Fee paid.

June 17—Copy of petition served on General Counsel.

Aug. 7—Answer filed by General Counsel.

Aug. 7—Request for hearing in San Francisco, California, filed by General Counsel.

Aug. 15—Notice issued placing proceeding on San Francisco, California, calendar. Answer and request served.

1941

April 8—Hearing set June 16, 1941, San Francisco.

1941

- June 24—Hearing had before Mr. Kern on the merits. Submitted. Briefs due Aug. 8, 1941.
Reply briefs due Sept. 8, 1941.
- July 8—Transcript of hearing June 24, 1941, filed.
- Aug. 6—Brief filed by taxpayer.
- Aug. 8—Brief filed by General Counsel.
- Aug. 8—Copy of brief served on General Counsel.
- Sept. 4—Reply brief filed by taxpayer.
- Sept. 5—Motion for leave to file brief as *Amici Curiae* and brief filed by taxpayer.
- Sept. 8—Motion for leave to file brief as *Amici Curiae* granted.
- Sept. 8—Copy of motion and brief as *Amici Curiae* served on General Counsel.

1942

- June 18—Memorandum findings of fact and opinion rendered. Kern, #16. Decision will be entered for the respondent. 6/18/42 copy served.
- June 19—Decision entered. Kern, Div. 16.
- Aug. 13—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.
- Aug. 18—Proof of service filed by taxpayer.
- Aug. 20—Agreed designation of contents of record filed. [1*]

*Page numbering appearing at top of page of original certified Transcript of Record.

United States Board of Tax Appeals

103408

SAN JOAQUIN VALLEY POULTRY PRO-
DUCERS ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR RE-DETERMINATION
OF DEFICIENCY

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency IRA:90-D-DCE, dated April 8, 1940, and as basis of this proceeding alleges as follows:

1. The petitioner is a non-profit, cooperative association organized and existing under and by virtue of the Agricultural Code of the State of California with its principal place of business in the City of Porterville, County of Tulare, State of California. The returns for the periods here involved were filed with the Collector for the Northern District of California.

2. That Notice of Deficiency, a copy of which is attached hereto and marked Exhibit A, was mailed to petitioner on April 8, 1940.

3. That the taxes in controversy are income taxes for the calendar years 1936 and 1937 in the following amounts: [2]

INCOME TAXES

	Deficiency
Calendar year 1936	\$2,261.01
Calendar year 1937	2,047.48
Total	<u>4,308.49</u>

4. The determination of tax set forth in the said Notice of Deficiency is based upon the following errors:

(a) The action of the Commissioner in including as income for the calendar year 1936 the amount of \$1,683.56 representing a sum set aside for Reserve for Overpayments, and which sum the Commissioner erroneously held was not deductible from gross income;

(b) The action of the Commissioner in including as income for the calendar year 1936 the amount of \$5,722.72 representing a sum set aside for Reserve for Zoning Hazard, and which sum the Commissioner erroneously held was not deductible from gross income;

(c) The action of the Commissioner in including as income for the calendar year 1936 the amount of \$2,215.29 representing a sum set aside for Reserve for Security of Membership, and which sum the Commissioner erroneously held was not deductible from gross income;

(d) The action of the Commissioner in including as income for the calendar year 1937 the amount of \$5,358.46 representing a sum set aside for Reserve for Zoning Hazard, and which sum the Commissioner erroneously held was not deductible from gross income; [3]

(e) The action of the Commissioner in including as income for the calendar year 1937 the amount of \$2,601.90 representing a sum set aside for Reserve for Security of Membership, and which sum the Commissioner erroneously held was not deductible from gross income.

5. The facts upon which the petitioner relies as a basis of these proceedings are as follows:

(a) Petitioner is a non-profit, cooperative association organized under the Agricultural Code of the State of California and engages in the marketing of eggs for its members and also engages in the sale and distribution to its members of farm supplies.

(b) In the year 1936 petitioner transacted a volume of business with non-members representing in volume 1.77% of the total volume of eggs marketed; and in 1937, representing .11% of the total volume of eggs marketed. In the purchasing division, the non-member business in 1936 represented 10.47% of the total participating patronage business done by the petitioner; and in 1937, the non-member business represented .52% of the total participating patronage business done by petitioner.

(c) The petitioner is organized without capital stock and its membership is confined entirely to producers of agricultural products. Each member pays a membership fee of Ten Dollars. The further capital for the operation of the petitioner has been derived from deductions from the proceeds of eggs marketed for the members or deductions from the net returns which otherwise would have been pay-

able to members on the basis of savings on supplies sold to them. Under the by-laws of the association, the net pro- [4] ceeds derived from overcharges on sales, after all expenses have been paid, belong to the members and are prorated in proportion to the amount of business each member has transacted with the association. In view of the limited capital funds of the association, it has been found desirable for the efficient operations of the association to retain certain of these funds, which otherwise would be distributable to members, and to place them in accounts which were entitled "Reserves". At the time these amounts were placed in such accounts, each member was credited with his respective interest in that account, and the books of the association showed at the time that the retention was made that the member was actually credited with the same so that it constituted an obligation of the association to that particular member.

(d) Under the by-laws of the association and under the accounting system as used by the association, the amounts set aside in the accounts entitled "Reserve for Overpayments", "Reserve for Zoning Hazard" and "Reserve for Security of Membership" in 1936 and 1937 as well as previous years were the property of the members and were a recognized liability of the association to the members. The members were advised of the state of their accounts and of the obligation of the association to them. No specific date for the payment of the obligation was provided, but it was contemplated

that as these amounts would increase in the various funds, so as to provide adequate protection for the operation of the association, then the earliest amounts deposited in the fund would be paid out to the members in satisfaction of the obligation of the association to them. In the event of the liqui- [5] dation of the association, these amounts were a recognized obligation to be paid before a distribution to members. These amounts did not at any time constitute net income to the association, but always represented an obligation of the association to the members.

(e) In the original report of the Examining Officer, the 1937 Reserve for Zoning Hazard which was disallowed was fixed at \$9,657.81. After conference, the amount which was not allowed as deductible was reduced to \$5,358.46. However, the entire amount should have been recognized as deductible.

(f) The Commissioner has failed to give recognition to the cooperative nature of this association and of the positive nature of the obligation represented by these reserves, and as a result has erroneously set aside their deduction from gross income and has erroneously included all of the amounts as part of the net income of the association.

(g) Petitioner has paid dividends to non-members on purchases. However, petitioner recognizes that if said dividends have not been on a similar basis to those paid to members, that it has a taxable net income based on any profit which accrues to members on such non-member business, after deducting for patronage dividends paid.

The amount of business done with non-participating members in 1936 was 13.60% of the total business; and in 1937 was 1.01% of the total business.

Therefore, the petitioner contends that the taxable net income for the years 1936 and 1937, if complete exemption [6] is not allowed, can only be calculated in the following manner:

1936			
	Total	Members	Non-Members
Percent business	100.00%	86.40%	13.60%
Net income	\$24,836.50	\$21,458.74	\$3,377.76
Patronage Distribution:			
Cash	5,420.62	2,931.44	2,489.18
Revolving Fund Certificates.....	8,794.31	8,794.31	
Revolving Fund Certificates for:			
Security of Memberships Fund..	2,215.29	2,215.29	
Retains for Zoning Hazards.....	5,722.72	5,722.72	
Retains for Overpayments	1,683.56	1,683.56	
Totals.....	23,836.50	21,347.32	2,489.18
Under distribution	1,000.00	111.42	888.58
Taxable net income for 1936.....			888.58

1937			
	Total	Members	Non-Members
Percent business	100.00%	98.99%	1.01%
Net income	\$27,563.79	\$27,285.40	\$278.49
Patronage Distribution:			
Cash	4,615.41	4,481.08	134.33
Revolving Fund Certificates.....	13,443.24	13,443.24	
Revolving Fund Credits for:			
Security of Memberships Fund..	2,601.90	2,601.90	
Retains for Zoning Hazards.....	2,292.78	2,292.78	
Totals.....	32,611.14	32,476.81	134.33
Under-Over Distribution	5,047.35	5,191.41	144.06
Taxable net income for 1937.....			144.06

[Printer's Note: Italics underlined in red in original copy.]

Wherefore, petitioner prays that this Board may hear this proceeding and determine that petitioner is not subject to tax on the amounts set aside in the Reserves for Overpayment, [7] Zoning Hazards and Security for Membership in the years 1936 and 1937; and that the taxable net income for 1936 should be calculated at an amount not in excess of \$888.58; and that the taxable net income for 1937 should be calculated at an amount not in excess of \$144.06.

MILTON D. SAPIRO

Attorney for Petitioner

2408 Russ Building

San Francisco, California

SAN JOAQUIN VALLEY

POULTRY PRODUCERS

ASSOCIATION,

[Seal] By F. M. CRABTREE

Secretary [8]

(Duly Verified) [9]

EXHIBIT A

TREASURY DEPARTMENT

Internal Revenue Service
433 Federal Office Building
San Francisco, California.

Office of
Internal Revenue
Agent in Charge
San Francisco Division
IRA :90-D-DCE
(C:T:PD-SF:GMB)

Apr 8, 1940

San Joaquin Valley Poultry Producers Association,
327 North "D" Street,
Porterville, California.

Gentlemen:

You are advised that the determination of your income tax liability for the taxable years 1936 and 1937 disclosed a deficiency of \$4,308.49 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

it to the Internal Revenue Agent in Charge, San Francisco, California for the attention of Conference Section. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By (Signed) F. M. HARLESS

Internal Revenue Agent in
Charge

Enclosures:

Statement

Form of Waiver [10]

STATEMENT

San Francisco

IRA:90-D

DCE

(C:TS:PD

SF:GMB)

San Joaquin Valley Poultry Producers Association,
327 North "D" Street,
Porterville, California.

Tax Liability for the Taxable Years Ended December 31, 1936 and December 31, 1937

INCOME TAX

	Liability	Assessed	Deficiency
1936	\$2,261.01	None	\$2,261.01
1937	2,047.48	None	2,047.48
	<hr/>	<hr/>	<hr/>
Totals.....	\$4,308.49	None	4,308.49
	<hr/> <hr/>	<hr/> <hr/>	<hr/> <hr/>

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated June 28, 1939, to your protest dated August 25, 1939, and to the statements made at the conferences held on October 17, 1939 and January 19, 1940.

A copy of this letter and statement has been mailed to your representative, Mr. Milton D. Sapiro, 2002 Russ Building, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you and on file in this office.

ADJUSTMENTS TO NET INCOME

Year: 1936

Net income as disclosed by return.....	None
Unallowable deductions and additional income:	
(a) Additions to reserves.....	\$10,621.57
	<hr/>
Net income adjusted	\$10,621.57
	<hr/> <hr/>

[11]

EXPLANATION OF ADJUSTMENTS

(a) It is held that credits to the following reserves are not deductible from gross income since they represent additions to

San Joaquin Valley Poultry Producers Association
Statement (Continued)

Explanation of Adjustments (Continued)

reserves for contingencies and not definitely determined liabilities payable by you:

Reserve for Overpayments	\$1,683.56
Reserve for Zoning Hazard.....	5,722.72
Reserve for Security of Memberships.....	2,215.29
Reserve for Legal and Auditing.....	1,000.00
<hr/>	
Total.....	\$10,621.57
<hr/>	

COMPUTATION OF TAX

Year: 1936

Excess-profits Tax:

Taxable net income \$10,621.57

Less:

10% of \$110,000.00 value of capital
stock as declared in your capital
stock tax return for year ended June
30, 1936 11,000.00

Net income subject to excess-profits Tax None

Income Tax:

Normal Tax:

Taxable net income \$10,621.57

Normal tax net income..... \$10,621.57

8% of \$2,000.00 (Over to \$ 2,000) 160.00
11% of \$8,621.57 (Over \$2,000 to \$15,000) 948.37

Total normal tax \$ 1,108.37

San Joaquin Valley Poultry Producers Association
Statement (Continued)

Computation of Tax

Year: 1936

(Continued)

Surtax on Undistributed Profits:	
Taxable net income	\$10,621.57
Less: Normal tax	1,108.37
<hr/>	
Adjusted Undistributed net income.....	9,513.20
<hr/>	
Less:	
Specific credit	4,048.68
Remainder subject to surtax.....	5,464.52
<hr/>	
7% of \$ 951.32.....	66.59
12% of \$ 951.32.....	114.16
17% of 1,902.64.....	323.45
22% of 1,659.24.....	365.03
<hr/>	
Amount of tax	\$ 869.23
Plus:	
7% of \$4,048.68 (specific credit).....	283.41
<hr/>	
Total surtax	1,152.64
Normal tax	1,108.37
<hr/>	
Total income tax (normal tax and surtax)	2,261.01
Income tax assessed (normal tax and surtax):	
Original list, account No. 854114—	
First California District	None
<hr/>	
Deficiency of income tax.....	\$ 2,261.01
<hr/>	

[13]

ADJUSTMENTS TO NET INCOME

Year: 1937

Net income as disclosed by return.....	\$ None
Unallowable deductions and	

San Joaquin Valley Poultry Producers Association
Statement (Continued)

Adjustments to Net Income

Year: 1937

(Continued)

additional income		
(a) Additions to reserves.....	\$8,335.36	
(b) Federal income tax	2,292.78	10,628.14
	<hr/>	<hr/>
Total		10,628.14
Nontaxable income and additional deductions		
(c) Legal and auditing expense paid	625.00	
(b) Accrued capital stock tax.....	123.00	748.00
	<hr/>	<hr/>
Net income adjusted.....		<u>9,880.14</u>

EXPLANATION OF ADJUSTMENTS

Year: 1937

(a) It is held that credits to the following reserves are not deductible from gross income since they represent additions to reserves for contingencies and not definitely determined liabilities payable by you:

Reserve for Zoning Hazard.....	\$ 5,358.46
Reserve for Security of Memberships.....	2,601.90
Reserve for Legal and Auditing.....	375.00

Total.....	<hr/>	\$ 8,335.36
------------	-------	-------------

(b) Federal income tax paid is not an allowable deduction under the provisions of Section 23 (c) of the Revenue Act of 1936.

(c) Amounts paid in 1937 for legal and auditing expense and charged to the reserve established at December 31, 1936, are allowable deductions from gross income.

[14]

(d) Accrued capital stock tax is allowable as a deduction as follows:

San Joaquin Valley Poultry Producers Association
Statement (Continued)

Explanation of Adjustments

Year: 1937

(Continued)

Declared value of capital stock as at June 30, 1936	\$110,000.00
Net profit 1936, as amended.....	10,621.57
Sale of membership certificates.....	2,430.00
Adjusted declared value	<u>\$123,051.57</u>
Capital stock tax at \$1.00 per \$1,000 value	<u>123.00</u>

COMPUTATION OF TAX

Year: 1937

Excess-Profits Tax:

Taxable net income	9,880.14
Less: 10% of \$123,051.57 value of capital stock as declared in your capital stock tax return for year ended June 30, 1937	12,305.16

Net income subject to excess-profits tax...\$ None

Income Tax:

Normal tax:

Taxable net income.....	9,880.14
Normal tax net income.....	<u>9,880.14</u>
8% of \$2,000.00 (Over0 to \$ 2,000)	160.00
11% of \$7,880.14 (Over \$2,000 to \$15,000)	866.82
Total normal tax	<u>\$ 1,026.82</u>

[15]

Surtax on Undistributed Profits:

Taxable net income	\$ 9,880.14
Less: Normal tax	1,026.82
Adjusted undistributed net income.....	<u>8,853.32</u>

San Joaquin Valley Poultry Producers Association
Statement (Continued)

Computation of Tax
Year: 1937
(Continued)

7% of \$5,000.00.....	350.00
12% of 885.33.....	106.24
17% of 1,770.66.....	301.01
22% of 1,197.33.....	263.41
<hr/>	
Total surtax	1,020.66
Normal tax	1,026.82
<hr/>	
Total income tax (normal tax and surtax) \$	2,047.48
Income tax assessed (normal tax and surtax) :	
Original list, account No. 853871—	
First California District	None
<hr/>	
Deficiency of income tax.....	\$ 2,047.48
<hr/> <hr/>	

[Endorsed]: U. S. B. T. A. Filed Jun. 17, 1940.
[16]

[Title of Board and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits that the petitioner is a cooperative association with its principal place of business in the City of Porterville, County of Tulare, State of California. The returns for the periods here in-

volved were filed with the Collector for the Northern District of California; but denies the remaining allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 or the petition.

3. Admits the allegations contained in paragraph 3 of the petition. [17]

4(a) to (e), inclusive. Denies the Commissioner erred in the determination of the deficiency as alleged in subparagraphs (a) to (e), inclusive, of paragraph 4 of the petition.

5(a). Admits that petitioner is a cooperative association and engaged in the marketing of eggs and also engages in the sale and distribution of farm supplies, but denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

5(b), (c), and (d). For lack of information, denies the allegations contained in subparagraphs (b), (c), and (d) of paragraph 5 of the petition.

5(e) and (f). Denies the allegations contained in subparagraphs (e) and (f) of paragraph 5 of the petition.

5(g). Admits that petitioner has paid dividends to non-members on purchases but denies the remaining allegations contained in subparagraph (g) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's

determination be approved and the petitioner's appeal denied.

(Signed) J. P. WENCHEL

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

T. M. MATHER,

Special Attorneys,

Bureau of Internal Revenue.

TMM/gw

8-1-40

[Endorsed]: U. S. B. T. A. Filed Aug. 7, 1940.

[18]

[Title of Board and Cause.]

M. D. Sapiro, Esq., for the petitioner.

Harry R. Horrow, Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

The respondent has determined a deficiency in petitioner's income tax for the calendar years 1936 and 1937 in the respective amounts of \$2,261.01 and \$2,047.48, which arise from his disallowance of certain deductions claimed for reserves by the petitioner which is a cooperative association engaged in marketing eggs for members and non-member poultry raisers and [19] in the sale and distribution of supplies. Three issues are raised, the first confined

to 1936, the others common to both years: (1) whether respondent erroneously disallowed \$1,683.56 as a deduction for a reserve for overpayments on egg sales; (2) deductions of \$5,722.72 and \$5,358.46, claimed for the respective years as reserves for a zoning hazard; and (3) deductions of \$2,215.29 and \$2,601.90, for the respective years, as reserves for security of membership.

The facts are as follows:

FINDINGS OF FACT

The petitioner is a cooperative association organized under the laws of California, with its principal place of business in Porterville, Tulare County. It filed its income tax returns for the years 1936 and 1937 with the collector of internal revenue for the Northern District of California.

The members of the petitioner are poultry producers. Membership is acquired by the payment of a \$10 fee, as provided in the by-laws, which, with the articles of incorporation, were put in evidence and are incorporated here by reference. Petitioner has at Porterville, California, a feed mill, warehouse, and an office for the marketing of poultry and eggs on behalf of its members. During the years 1936 and 1937 its eggs were marketed in weekly pools, and payment was made to the members participating in the pools on the basis of the number of eggs marketed by petitioner for each member, the proceeds to members being determined by the quotations in the Los Angeles market, less estimated

expenses. Petitioner [20] marketed eggs for non-members during the years 1936 and 1937, but the non-members did not participate in the pools. Eggs obtained from non-members were considered as cash purchases. During the years 1936 and 1937 petitioner sold feed and other farm supplies to members and non-members. The prices at which such supplies were sold to members were based on direct cost to petitioner, plus overhead expenses, the prices fixed being slightly above such expenses so that there would be no danger of loss to petitioner.

The following several resolutions were adopted by petitioner's board of directors on December 21, 1936:

1. One resolution authorized the payment of patronage dividends to members and non-members alike, for the year 1936, in cash or its equivalent.

2. Another resolution authorized the creation of an account on the books of petitioner designated "Reserve Against Loss by Overpayment", and recited that the aggregate amount retained from proceeds of the sale of eggs marketed by petitioner for members during the year 1936 was \$1,683.56, and that this amount was to be credited to a Reserve for Overpayments in order to avoid loss from market fluctuations, deterioration, carrying charges, or unexpected expenses in the marketing of eggs by the petitioner on behalf of its members.

3. Another resolution authorized the sum of \$5,722.72 to be transferred on the books of petitioner to an account entitled "Reserve for Zoning Hazard."

4. Still another resolution authorized the transfer of \$2,215.29 [21] to an account on the books of petitioner entitled "Reserve for Security of Membership", this amount being 10 percent of petitioner's net earnings as shown by its books for the year 1936.

5. Finally, a resolution provided for the declaration of a patronage dividend in the amount of \$14,214.93, consisting of \$11,725.75 to members and \$2,489.18 to non-members, to be paid in cash or its equivalent. This, as the resolution stated, was a dividend of 2 percent on all purchases in addition to authorized reserves to members, and a larger proportion to non-members, "equalling in percentage the amount carried to reserves for accounts of members."

The following several resolutions were adopted by the board of directors of petitioner at a meeting held on December 31, 1937:

1. One resolution recited that it was the intention of petitioner that its members should be credited on the books with their pro rata share of any amounts retained by the association which did not represent valuation reserves or other costs and expenses of petitioner, and that such credits should be paid to its members and patrons whenever its board of directors should determine that the petitioner had available funds therefor not needed for its use. The resolution authorized the accountants of petitioner to determine the amounts allocable as credits to the members, and to record such credits

on the books of petitioner, and recited that the petitioner recognized the obligation to repay such credits in the manner stated above.

2. A second resolution authorized the transfer of \$9,657.81 on the books of petitioner to an account designated "Reserve for Zoning Hazard." [22]

3. Another resolution authorized the transfer of \$2,601.90 on the books of petitioner to the account, "Reserve for Security of Membership", this amount being 10 percent of the net earnings of petitioner, as disclosed by its books for the year 1937.

4. Finally, a resolution declared a patronage dividend in the amount of \$18,058.65, consisting of a dividend to members in the amount of \$17,924.32 and a dividend to non-members in the amount of \$134.33, to be paid in cash or its equivalent before closing its books for the year 1937. This dividend was, like that in the previous year, declared on a percentage basis to members and a larger percentage to non-members.

The account designated "Reserve for Zoning Hazard" was set up to provide against a change in the zoning ordinance of the City of Porterville. The plant of petitioner was in a residential region. Since there was no zoning ordinance authorizing petitioner to operate its plant, and the adjoining land owners asserted that its noise, dust, and dirt created a nuisance, and threatened to abate it; petitioner felt that a possible change in the zoning restrictions might require its removal, with consequent expense, and so set up a reserve to meet this contingency.

The "Reserve for Security of Membership" is provided for in the by-laws of petitioner, Article VIII, section 8, which provides as follows:

There shall be reserved out of the earnings of the business of the Association each year, ten (10) per cent of the net earnings for a Reserve Fund for security of the Membership Fund; such amount shall be computed annually, deducted after all other deductions for interest, overhead and operating expenses have been made and before "Members' Purchase Credits" have been prorated. [23]

Any moneys in this Reserve Fund or in any other Fund may be invested in property belonging to the Association, in outside securities, or used as a working capital in the operation of the business, or used in the payment and retirement of the Feed Finance Fund Certificates and/or Advance Fund Certificates of the Association, or in payment of small balances standing to the credit of members in the "Members' Purchase Credits" record and in the "Members' Egg Pool Credits" record, all as provided for elsewhere in these By-Laws and all at the discretion of the Directors.

The amounts declared as patronage dividends, which were authorized by the resolutions summarized above were paid without any additional authorization of the board of directors. The resolutions declaring these dividends authorized them to be paid in cash or in interest-bearing certificates.

Article VIII, section 1, of the petitioner's by-laws provides as follows:

This Association is organized as a non-profit co-operative organization doing business with its members and with non-members as provided in the Articles of Incorporation of this Association.

The "Net Proceeds" shall be such funds as are derived from Overcharges on sales and as are left after all expenses shall have been paid, or provided for, all at the discretion of the Directors.

The "Net Proceeds" resulting from the operation of the business, if any, shall belong to the members and shall be known as "Members' Purchase Credits" and shall be prorated to them in proportion to the amount of business each member has transacted with the Association during the period of time in which said "Members' Purchase Credits" have accumulated.

The Directors, after providing for all necessary overhead and all duly authorized reserves, are authorized to prorate and refund all of the rest of the "Members' Purchase Credits" to the members in proportion to each member's purchases from the Association during the time such "Members' Purchase Credits" shall have accumulated, all in the manner particularly set forth as follows:

Twenty-five (25) per cent thereof to be prorated and paid to the member in cash annually

as soon as practical after the close of business at the end of each fiscal year and after the Auditor shall have completed the annual audit and shall have re- [24] leased his report to the Directors; seventy-five (75) per cent thereof to be applied to the creation and maintenance of a "Feed Finance Fund" all as provided for elsewhere in these By-Laws.

The "Reserve for Security of Membership", which was authorized and provided for in the by-laws, was always credited before any patronage dividend was declared, for the purpose of protecting the petitioner against any loss in its working capital. No amounts credited to this reserve, pursuant to petitioner's resolution summarized above, could be paid to any member or non-member without authorization of the board of directors of petitioner.

The purpose of the resolution authorizing credits to the "Reserve Against Loss by Overpayments", was to protect the petitioner against any payments of excessive amounts to members marketing their eggs in pools. The returns from the marketing of eggs was uncertain. When the petitioner paid its members for eggs still unmarketed and at prices then quoted on the market, it ran the risk that it would not realize as much when the eggs were sold by it. Uncertainty in estimating expenses was also involved. This reserve was intended to protect the petitioner against both these risks. No amounts credited to this reserve could be paid out without authorization of the board of directors of the peti-

tioner. When any of the amounts were transferred to the reserves described above, the books showed the credits to such reserves but there was no physical segregation of cash or funds representing the amounts of these reserves. All of the moneys of petitioner were kept in one fund.

The policy of the board of directors was to authorize payment to members whenever the financial condition of petitioner was such that the [25] amounts credited to the various reserve accounts could be paid to members without any detriment to petitioner. It was understood at all times that all the moneys represented by the reserves, which were, in turn, credited to the various accounts of the members, could be used by the petitioner for any of the purposes authorized in its by-laws. But if these amounts were to be used by petitioner for payment to members in cash or interest-bearing certificates, the payment had to be authorized by the board of directors of petitioner. They could not be withdrawn by the member to whom it was credited. Sample ledger sheets taken from the books of petitioner, and put in evidence show the credits made to the accounts of the various members of petitioner, and a statement of membership equity for each member, a sample of which was put in evidence, was sent to each member at the end of each year.

Patronage dividends, when declared, were credited to the accounts of the members. The patronage dividends which were paid in cash or in certificates were kept on a separate ledger sheet. The ledger

sheet in evidence contains credits for reserves for contingent expenses, such as reserves for legal and auditing expense. The statement of membership equity is an aliquot portion of the net worth of petitioner according to its books, allocated to the individual members on the basis of patronage.

OPINION

Kern:

Petitioner is a cooperative poultry association which acts for both members and non-members. Petitioner claims the deduction of [26] three reserves set up for (1) a zoning hazard, (2) the overpayment of egg sale proceeds, and (3) for security of petitioner's membership. The first is claimed for 1936 only, the others for 1937 as well. Respondent has disallowed all three. There is apparently no claim that the amounts credited to these reserves constitute expenses, and there is no evidence that the reserves were used to meet the contingency contemplated when they were set up. Of the several reserves, that for zoning hazard would seem to be the only one which might involve a risk indeterminable in its duration and in its cost until realized. The reserves for egg sale overpayments and for certainty of membership, on the other hand, might readily have been distributed in patronage dividend payments at the end of petitioner's fiscal year, when all accounts were settled. No evidence was put in on the reasonableness of the zoning hazard reserve, the only testimony being to the effect that removal of petitioner's buildings from the residential region

where they were would cost a good deal. Since the reasonableness of this reserve has not been established, we must fall back on what appears to be, in any event, petitioner's principal reliance.

Petitioner insists in its brief that a proportionate part of all three of these reserves was allocated to each poulterer-member, was so credited on its books and so treated in the so-called "patronage" dividends distributed. The argument is, then, in effect, that the petitioner was a cooperative association under California law and the reserves constituting returns on proceeds of sales made by petitioner for its members did not belong to the petitioner and were not a part of its taxable income. It is conceded by respondent that the petitioner was a cooperative association carrying on business on a non-profit basis, and that all petitioner's earnings and assets were ultimately distributable to its members, but he contends that except to the extent that such income or assets were subject to a member's sale command during the taxable year, they must be treated as belonging to petitioner, a corporate entity distinct during its existence from its constituent members. *Fruit Growers' Supply Co.*, 21 B.T.A. 315; affirmed 56 Fed. (2d) 90 (C.C.A. 9); *Farmers' Union Coop. Co. v. Commissioner* 90 Fed. (2d) 488 (C.C.A. 8); *Coop. Oil Assn. v. Commissioner*, 115 Fed. (2d) 666 (C.C.A. 9).

In the *Fruit Growers'* case at p. 93, this point was discussed:

* * * A somewhat similar contention was con-

sidered by the Supreme Court in dealing with a mutual life insurance company. *Penn Mutual Life Ins. Co. v. Lederer*, 252 U. S. 523. It was held that, in computing the gross income of the insurance company, payments made by members could not be reduced by amounts which had not been actually repaid to them or credited to them within the taxable year. Until "patronage dividends" are declared they have not accrued as obligations from the corporation to its members. We agree in this regard with the conclusions of the Board of Tax Appeals which we quote as follows: "The petitioner now asks that we increase the patronage-dividend deduction on account of an amount which has not been returned to the members and when no dividend declaration has been made with respect thereto. We find nothing in the petitioner's by-laws which would cause these patronage dividends to accrue as such without corporate action setting them apart as a liability of the petitioner to its members. * * * [28]"

And in the *Farmers' Union* case, it was said, at p. 491:

* * * While those who might be entitled to patronage dividends have, in a sense, an interest in the money, it is a character of interest not greater, if as great, as that of a stockholder in an ordinary corporation. Such interest never ripens into an individual ownership or right of ownership until and if a patronage dividend be declared. * * *

The zoning hazard reserve we have already discussed. Obviously it could not be used by the petitioner in the emergency of a compulsory removal under new zoning restrictions if it was subject to be depleted at any time by the petitioner's patrons. The over-payment reserve was to prevent loss to the petitioner through indeterminable expenses incurred in marketing eggs and through the fluctuation in market prices between the day of the petitioner's purchase of eggs from its patrons and the day when it could resell them to the public. The membership security reserve was to avoid impairment in petitioner's working capital by a too sudden reduction in membership. It is true that the petitioner credited to its patrons on its books an aliquot part of each of these reserves, but in each case further action by its board of directors was necessary before any portion of these reserves could be made available to the members. On the other hand, patronage dividends in cash or certificates could be distributed on the authority of the resolution declaring them, without more. They were at once thereby subjected to the patron's "unfettered command" (to use the now classical phrase of Holmes, J., in *Corliss v. Bowers*, 281 U. S. 376.)

This essential difference serves to distinguish such cases as our recent *Midland Cooperative Wholesale*, 44 B.T.A. 824. We pointed out in that case that the Treasury Department, in the absence of any statutory [29] provision allowing any deduction of patronage dividends, had shown "great liberality" in allowing them at all and that the justification for

the allowance lay in the fact "that the so-called dividends are, in reality, rebates." (at p. 830). After discussing the Association's corporate structure we allowed the amounts credited to reserves and in proportion to each participating member's share on the ground that "the amounts so credited, in our opinion, could have been withdrawn by the members at any time. In at least two instances they were, in effect, withdrawn." (at p. 834).

Even a statutory deduction is a matter of legislative grace and not of right, *New Colonial Ice Co. v. Helvering*, 292 U. S. 435; and a deduction which is a matter of administrative grace necessarily rests upon even a narrower foundation. When a just and intelligible administrative line has been drawn between those reserves of a cooperative association which must be held rebates in order to satisfy substantial justice and those over which the patron-member has no control; and when that line has been upheld by this Board and the courts, we know of no way in which greater liberality can be properly accorded. See *Cooperative Oil Assn. v. Commissioner*, *supra*, at p. 668; and we, therefore, conclude that the deficiencies must be sustained.

Enter:

Judgment will be entered for the Respondent.

Entered Jun. 18, 1942. [30]

United States Board of Tax Appeals
Washington

Docket No. 103408

SAN JOAQUIN VALLEY POULTRY PRO-
DUCERS ASSOCIATION,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Board, as set forth in its Memorandum Findings of Fact and Opinion, entered June 18, 1942, it is Ordered and Decided: That there are deficiencies in income tax for the calendar years 1936 and 1937, in the respective amounts of \$2,261.01 and \$2,047.48.

Enter:

(Signed) JOHN W. KERN,
Member.

Entered Jun. 19, 1942. [31]

[Title of Board and Cause.]

PETITION FOR REVIEW BY THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT OF A DECISION OF
THE UNITED STATES BOARD OF TAX
APPEALS

The petitioner above named, by Milton D. Sapiro,
its attorney, hereby respectfully files its petition for

a review by the United States Circuit Court of Appeals for the Ninth Circuit of a decision by the United States Board of Tax Appeals rendered on the 19th day of June, 1942, determining deficiencies in the petitioner's income taxes for the calendar years 1936 and 1937 in the respective amounts of \$2,261.01 and \$2,047.48 and respectfully shows:

I.

STATEMENT OF VENUE

The petitioner, San Joaquin Valley Poultry Producers Association is a non-profit agricultural cooperative association duly organized and existing under and by virtue of the laws of the State of California with its principal place of business in Porterville, California. [32]

The returns of income tax in respect of which the aforementioned tax liabilities arose, were filed with the Collector of Internal Revenue for the first collection district of California located in San Francisco, California, and within the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit. Jurisdiction of that court is founded upon Sections 1141 and 1142 of the Internal Revenue Code.

II.

NATURE OF CONTROVERSY

The controversy relates to the question as to whether the petitioner is entitled to deduct from its gross income certain amounts which had been

credited and appropriated to the individual producer members as part of their patronage returns and which then had been placed in specific reserve funds in each of the years involved.

Petitioner is an agricultural cooperative association engaged in the marketing of agricultural products of its members and the furnishing to them of supplies on a non-profit basis. It is organized without capital stock and all of its members are producers. Under its by-laws, all net proceeds resulting from the operation of its business belong to its members in proportion to the amount of business transacted with the association. Petitioner transacted a small amount of business with non-member producers but treated non-members and members alike in the payment of patronage dividends. [33]

In the course of the usual operations of such an agricultural cooperative association, there is an excess at the end of the year resulting from overcharges accumulated over estimated cost of operations. Provision is made at the end of each year so that all net proceeds are prorated in proportion to the patronage. In each of the years 1936 and 1937 this excess was determined by petitioner and was prorated among the producers in proportion to their patronage of the association.

Distribution was made to non-members in cash. Distribution to members was made in three ways: (1) part was distributed in cash; (2) part was credited and appropriated to the individual mem-

bers and then placed in certain existing capital funds and the interest of the individual was evidenced by a certificate issued to him; and (3) part was credited and appropriated to the individual members and then placed in certain reserve funds set up under the direction of the by-laws or the Board of Directors and the interest of the individual in such funds was evidenced by a statement sent to him. The amounts involved in this latter distribution referred to as (3) are the sums in question in this proceeding.

Specific amounts were appropriated for each fund by order of the Board of Directors. These funds were placed to the credit of the individual producer and were recognized as a liability of the association to the individual producer member by action of the Board of Directors. A statement was given to the individual producer as to the extent of his interest in each of said funds. This use of the funds otherwise payable [34] to the individual was all with the approval of the individual members. This practice of so handling these refunds was explained to each producer when he became a member.

In 1936 a deduction was made from the returns otherwise due to producer for a reserve for overpayments on eggs sold. Also in 1936 a deduction was made for a reserve for a zoning hazard created by the Board of Directors and a reserve for security of membership provided for in the by-laws.

In 1937 deductions were made for the reserve for zoning hazard and the reserve for security of mem-

bership. In each instance the specific amount placed in such reserve was appropriated for and credited to the individual member producer by action of the Board of Directors, and a statement of his interest in these funds forwarded to him.

The Commissioner refused to allow these deductions from gross income and assessed a deficiency tax against petitioner for each of said years. The United States Board of Tax Appeals sustained the deficiency on the ground that such deductions could only be allowed if they were such as could be withdrawn at any time by the producer and so as it said "be subject to his sole command." Petitioner contends that the Commissioner and the Board of Tax Appeals have completely disregarded the fact that a definite liability to the producer member existed; that a definite credit had been set up for the producer; and that the allocation of that part of the patronage refund to these respective reserve funds is by and with the assent and direction of the producer. [35]

Petitioner further contends that the fact that payment might be deferred does not change the nature of these refunds as being originally the property of the producer member. Petitioner contends that inasmuch as there had been a definite act of appropriation to the credit of the producer and the liability to the producer had been definitely created, such amounts were deductible from gross income and were not a part of taxable income. Also petitioner contends that it was entitled to establish

reasonable reserves and the amounts placed therein did not constitute net income.

III.

ASSIGNMENTS OF ERROR AND STATEMENT OF POINTS UPON WHICH THE PETITIONER INTENDS TO RELY

Petitioner assigns as errors the following acts and omissions of the Board of Tax Appeals:

(1) The failure to allow as a deduction from petitioner's gross income in 1936 the sum of \$1,683.56 which was deducted and placed in a reserve for over-payment on eggs sale.

(2) The failure to allow as a deduction from petitioner's gross income in 1936 the sum of \$5,722.72 which was deducted and placed in a reserve for zoning hazard.

(3) The failure to allow as a deduction from petitioner's gross income in 1936 the sum of \$2,215.29 which was deducted and placed in a reserve for security of membership.

(4) The failure to allow as a deduction from petitioner's gross income in 1937 the sum of \$5,358.46 which was deducted and placed in a reserve for zoning hazard. [36]

(5) The failure to allow as a deduction from petitioner's gross income in 1937 the sum of \$2,601.90 which was deducted and placed in a reserve for security of membership.

(6) The failure to find that the deductions made for each of said reserve funds in the years 1936

and 1937 constituted an actual liability between petitioner and the individual producer members in proportion to their patronage and in the amounts respectively credited to each of said members in said reserve funds.

(7) The failure to find that the amounts credited in each of said reserve funds for the years 1936 and 1937 had been appropriated to the individual producers in proportion to their patronage and transferred to said funds as an addition to the working capital of the association with the assent of the said producers.

(8) The failure to find that the items disallowed were accrued as obligations of the association to the individual members.

(9) The failure to find that there was an existing liability of petitioner to each of the members in the specific amounts credited to each member in said reserve funds.

(10) The failure to find that the funds placed in these specific reserves in the respective years were credited to the individual members in proportion to their patronage and belonged to such members.

(11) The holding that there was required further corporate action by the Board of Directors of petitioner before [37] the amounts placed in such funds belonged to said producers.

(12) The failure to find that the amounts placed in said funds constituted a liability of said petitioner to each of said producers and that the liability

was created by the Board of Directors when the distribution to said funds was authorized.

(13) The failure to find that no further action of the Board of Directors was required for the purpose of creating said liability.

(14) The holding that the only deductions allowed would be limited to the amounts payable on the demand of the producers.

(15) The failure to find that the amounts placed in the (a) reserve against loss by over-payment for eggs in 1936, (b) the reserves for zoning hazard and security of membership in the years 1936 and 1937, respectively, did not constitute net income of the petitioner.

(16) The failure to find that petitioner was entitled to establish such reserves and place the respective amounts therein in the years 1936 and 1937 as a non-profit cooperative agricultural association.

(17) The failure to find that the reserves so established were reasonable reserves.

(18) The finding and holding that there were deficiencies in income tax for the calendar years of 1936 and 1937 in the respective amounts of \$2,261.01 and \$2,047.48 due from petitioner.

MILTON D. SAPIRO,

Attorney for Petitioner,
1411 Mills Tower, San
Francisco. [38]

(Duly verified.)

[Endorsed]: U. S. B. T. A. Filed Aug. 13,
1942. [39]

TESTIMONY

[Title of Board and Cause.]

Post Office Building,
San Francisco, California

June 24, 1941, 3:30 p. m.

Before: Hon. John W. Kern.

Met pursuant to notice.

Appearances:

Milton D. Sapiro, Mills Building, San Francisco, California, appearing for the San Joaquin Valley Poultry Producers Association, the petitioner.

Harry R. Horrow, appearing on behalf of the Commissioner of Internal Revenue, the respondent. [41]

PROCEEDINGS

The Member: San Joaquin Poultry Producers Association, Docket No. 103408.

Mr. Sapiro: Ready.

Mr. Horrow: Ready, your Honor.

The Member: Will counsel please state their appearances for the record?

Mr. Sapiro: Milton D. Sapiro, counsel for petitioner.

Mr. Horrow: Harry R. Horrow, for respondent.

The Member: May I have a statement as to the issues involved?

STATEMENT OF CASE ON BEHALF OF
PETITIONER

Mr. Sapiro: If your Honor please, the petitioner, San Joaquin Valley Poultry Producers Association, is a non-profit cooperative agricultural association organized under the Cooperative Agricultural Act of the State of California. That Act was originally Title 23 of the Civil Code of the State of California, but is now a division of Section 6 of the Agricultural Code, being Sections 1191 and the following sections of that Code.

That is, in 1933 many of the statutes in reference to agriculture were codified and this Cooperative Marketing Act, as it was known, was placed in that statute.

The petitioner operates in the San Joaquin Valley. It is organized without capital stock. Its membership is [43] composed entirely of persons engaged in the production of poultry. It markets the poultry products of its members, principally eggs, and also furnishes the members with supplies used in the production of these products, principally feed. The eggs are marketed on a non-profit basis in weekly pools, and their weekly return is made to the producers; and if at the end of the year there were any excess of the weekly return that was made, that would have been returned to the producers on the basis of the quantity of eggs marketed.

It happens that in the operation they pay such close margins that there is not that excess ordinarily.

The process of supplying them with supplies is

based on the usual cooperative practice whereby a slight overcharge is made over the cost and the estimated expenses of handling for the purpose of assuring that they will recover the amount that has been expended to secure those supplies for the producers.

Then at the end of the year the excess, as it is determined, is prorated among the various producers in proportion to their patronage with the Association.

The Association, not being a capital stock organization, has secured funds for its capital needs in a manner that has been very common among our California group of cooperatives particularly, what we call a sort of revolving fund [44] feature. That is, recognizing the situation of farmers, the Association acquires capital gradually by deducting either from the proceeds of sale of products or from the overcharges as they do on the furnishing of supplies a certain percentage for amount that it credits to the producer and for which it is obligated and has a liability to the producer just as any other loan obligation would be, but which it is not obligated to pay back immediately, but at some future date when sufficient sums have been accumulated; and then the further sums that are realized or accumulated are used to pay off those from whom the money was first retained.

That system enables the Association then to be carried on by those who are actively engaged in using its services. They supply the capital funds, and by reason of the slow process of revolving

places the Association in a position where it will have the use of that fund for a period, and no great amount will be drawn out at any one particular time so as to disrupt and make impossible the continuance of its operations.

This Association is operated in that manner, and there are two years of operation involved in this particular proceeding.

I might state, incidentally, that the Association did deal with non-members, but in a very limited way. As a [45] matter of fact, in the year 1936 in the marketing of eggs the quantity marketed for non-members as compared with that which was marketed for members was approximately a little over one per cent. In the year 1937 the quantity so marketed was approximately 1-10th of one per cent in volume of eggs.

In the matter of supplying of feed and other supplies, in 1936 the percentage of non-members' business was approximately 10 per cent, but in 1937 the non-membership business was approximately 1.06 per cent. That is, the tendency of the Association has all along been to eliminate non-member business.

Incidentally, they have paid patronage dividends to the non-members, as we will show from the records and from the resolutions of the Board of Directors. But in 1936 and 1937—these are the main issues involved in this particular proceeding, and the one as to whether or not this Association isn't entirely exempt by its compliance with the provisions of the Revenue Acts.

As I say, in those two years there were deductions made from the gains which would have otherwise been paid to the producer members, which were placed in three funds in 1936 and in two of the same funds in 1937.

These deductions of funds were called on the records "Reserves". They were really "retains" or were for that [46] purpose, and it was for overpayment of eggs and was a refund recreated to protect the Association or to enable it to have funds in event that it over paid its members on eggs in any particular season.

The other fund was a fund of a reserve for zoning hazard.

There was a situation in connection with the building occupied by the Association where it was felt that it might be necessary to either make improvements on there to eliminate noise and dust or to move. And they wanted to build up a fund to do this.

A third fund or reserve, as it was entitled, was provided for in the bylaws and it was called a "Reserve for Security of Membership" and is a 10 per cent deduction of the matter of gains made from overcharges provided for in the bylaws for the purpose of gradually building up capital.

In 1937 there were deductions for two of those reserves only, the Reserve for Zoning Hazard, and the Reserve for Security of Members, as they were entitled.

The Association at the time it made those deductions apportioned the amounts among the members

in accordance to their patronage and the amount of their patronage, credited those amounts on the books of the Association. And they were under the contention of the petitioner an [47] obligation of the Association. We contend that there was a distinct appropriation of those amounts, that they should have been recognized as proper deductions, that they were no longer the property of the Association and that they did not constitute in any manner a profit or gain to the Association.

That is the basis of the proceeding before the Board here today.

The Member: Thank you. Mr. Horrow?

Mr. Horrow: As I understand it, there is no controversy here as to whether or not the taxpayer is a taxable cooperative?

Mr. Sapiro: Well, I believe that there is. I think that the record will show that it is not a taxable cooperative.

Mr. Horrow: If your Honor please, I am unable to find anything in the pleadings that alleges that the petitioner is exempt from taxation by reason of any provision of the Revenue Act, nor are there any allegations to support a claim for exemption. That is a matter that I——

Mr. Sapiro: We allege the non-profit nature of the petitioner under the Revenue Act. You have denied that particular phase, and I think that that places it in issue.

Mr. Horrow: If your Honor will examine the assignments of error in this petition I think that it will soon [48] be apparent that there is no conten-

tion whatever here as to whether or not the petitioner is exempt from taxation. The sole controversy here, as I understand it, is whether or not the taxable income computed by the Respondent is correct for the years in question.

Mr. Sapiro: Well, I suppose that is implicit in both.

Mr. Horrow: I can say, your Honor, that the issue as to whether or not they are tax exempt has never been raised before the Bureau or before the Technical Staff.

The Member: Just from a cursory reading of this Assignment of Errors I don't think that that issue is properly raised in the pleadings. The errors assigned "(a)", "(b)", "(c)", "(d)" and "(e)" refer to various reserves that are in there.

Mr. Sapiro: That is correct.

The Member: And there is recited as one of the paragraphs of facts that petitioner is a non-profit cooperative association organized under the Agricultural Code of the State of California. But I would not consider that that was an assignment of error. That is no way to raise an issue of that kind, to hide it under the allegations of fact.

Mr. Sapiro: No. Of course, I have no desire to hide issues. [49]

The Member: I mean, it does not raise the issue as far as this proceeding is concerned.

Mr. Horrow: Well, I can say that I have no objection to proceeding in the trial of that issue if we were prepared on it, but we never had that issue presented to us, and I don't know what the facts are pertaining to it.

Mr. Sapiro: Well, I think that all of the facts will have to be developed as to the conduct of the Association.

Mr. Horrow: I will object to any trial on that particular issue, and at the proper time I will object to any evidence on that particular issue. My understanding is that the issues related to the deductibility of certain so-called "reserves". The respondent held that these were reserves for contingencies.

The Member: Well, the petition indicates that. There are five allegations of error, three with regard to reserves one year, and two with regard to reserves for another.

Mr. Sapiro: That is correct, your Honor. And of course, it is improper to disallow those on a non-profit marketing association. I don't think you will be at any disadvantage if we present the facts.

STATEMENT OF CASE ON BEHALF OF RESPONDENT

Mr. Horrow: Continuing with the statement of the [50] issues, the respondent considered that the amounts represented by these reserves were still a part of the property of the petitioner; that the credits that were made on the books of the petitioner to the various members were simply bookkeeping entries, and that the amounts represented by the reserves were no different from any other assets which the petitioner possessed.

So that our position is, in effect, that there can

be no accrual for the amounts that are covered by these so-called "Reserves".

Mr. Sapiro: Shall we proceed, your Honor?

The Member: Yes, proceed. Call your first witness.

Mr. Sapiro: Mr. Roby.

MR. W. B. ROBY

a witness called on behalf of the petitioner, being duly sworn, testified as follows:

The Clerk: State your full name, please?

The Witness: William B. Roby; R-o-b-y.

Direct Examination

Q. (By Mr. Sapiro) What is your address, Mr. Roby? A. Porterville, California.

Q. And you are the General Manager of the San Joaquin Valley Poultry Producers Association?

A. Yes, sir. [51]

Q. And how long have you been such?

A. Since nineteen—since the Association was organized under that name and prior to that under the old name. Since it was first organized.

Q. It was formerly known as the Porterville Poultry Association? A. Right.

Q. Since 1925? A. That is correct.

Mr. Sapiro: I might say, your Honor, that with the request of counsel we are permitted to put in a printed set of the articles and bylaws of the Association as they exist.

Q. (By Mr. Sapiro) Showing you a printed copy of Articles and Bylaws of San Joaquin Valley

(Testimony of W. B. Roby.)

Poultry Producers Association, can you state whether or not that is the Articles and Bylaws as they existed in 1936? A. It is.

Mr. Sapiro: We would like to offer that in evidence as Petitioner's Exhibit No. 1.

The Member: Admitted in evidence.

(The copy of articles and bylaws so offered and received in evidence, was marked Petitioner's Exhibit No. 1 and was made a part of this record.) [52]

Q. (By Mr. Sapiro) I am showing you a printed set of the Articles and Bylaws as amended February 4, 1937. Is that the Articles and Bylaws as they existed in 1937? A. Yes.

Mr. Sapiro: For the information of your Honor I wish to say that the amendment appears on page 21 and merely refers to the manner of election of directors and the other elements of the bylaws are the same.

The Member: Do you offer that in evidence?

Mr. Sapiro: I offer that in evidence.

Mr. Horrow: No objection.

The Member: Admitted in evidence.

The Clerk: Two.

(The articles and bylaws as amended so offered and received in evidence, were marked Petitioner's Exhibit No. 2 and were made a part of this record.)

(Testimony of W. B. Roby.)

Q. (By Mr. Sapiro) You are familiar with the members of the Association, are you not?

A. Yes, sir.

Q. What is their occupation?

A. Poultry producers.

Q. All of them?

A. Yes. They may be other—they may be producers of other agricultural products, but they are all producers of poultry. [53]

Q. They are all farmers?

A. All farmers.

Q. And on entering the Association they pay a membership fee of \$10 as provided by the by-laws?

A. Yes, sir.

Q. Where is the principal place of business?

A. Porterville, California.

Q. And you have a plant there?

A. Yes, sir.

Q. And of what does that plant consist? Feed mill?

A. Feed mill and warehouses.

Q. And a selling office, I presume?

A. Yes, sir.

Q. And you market poultry of your members?

A. At the present time we do not.

Q. Do you market the eggs? A. Yes, sir.

Q. In 1936 what did you market?

A. We marketed a small amount of poultry, but principally eggs; very little poultry then.

Q. On what basis were those eggs marketed?

A. In Los Angeles.

(Testimony of W. B. Roby.)

Q. No. On what basis? How were they handled?
In pools? A. Yes; weekly pool.

Q. A weekly pool. And how did you make your payment to [54] the producers?

A. By Association check at the end of each week.

Q. And how was it determined? What amount?

A. Determined upon the basis of the number of eggs each member marketed or delivered to us to market, and the price was determined by the Los Angeles quotations less expenses.

Q. Less estimated expenses?

A. The price we received in Los Angeles, which was based on the market quotations less our expenses.

Q. And those proceeds were returned on that basis? A. Yes, sir.

Q. And then during 1937 you also marketed eggs for your members? A. Yes, sir.

Q. And returned them the same basis?

A. Yes, sir.

Q. Did you market some eggs for non-members during 1936? A. A very small amount.

Q. Do you know how payment was made and what payment was made to the non-members?

A. The non-members did not participate in the pool. They were entered in our records and considered as cash purchases.

Q. And were those cash purchases made at the market?

(Testimony of W. B. Roby.)

A. Very nearly the same as to members. [55]

Q. Was there any gain made off of those purchases?

Mr. Horrow: Objection to that upon the ground it calls for a conclusion, and the books and records are the best evidence.

What is your purpose here?

Mr. Sapiro: I might say that in dealing with non-members on eggs I don't want——

Mr. Horrow (Interposing): And that goes to the issue of tax exemption. I will object upon the ground that it is not a part of any issue in this case, your Honor.

Mr. Sapiro: Oh, no, it is a source of gain.

The Member: Well, you have stated two good objections anyway. I will sustain the objection on the grounds stated.

Q. (By Mr. Sapiro) In 1937 you dealt with non-members on eggs, did you not?

A. Yes, sir.

Q. And just handled a small quantity?

A. Very small.

Q. The feed and other agricultural supplies were sold by the Association to members and non-members who were producers? A. Yes, sir.

Q. The non-members were producers as well as the members? A. Yes, sir. [56]

Q. And in 1936 feed and supplies were sold?

A. Yes sir.

Q. On what basis were the feed and supplies sold? A. You mean basis of price?

(Testimony of W. B. Roby.)

Q. Yes. How was the——

A. (interposing) They were sold to the member on the basis of what the cost is to the Association, plus the cost of mixing, delivering and selling, including office. The price fixed is intended to be slightly above that cost and expense, so that at the end of the year there will be no danger of a loss.

Q. Then at the end of the year the excess overcharge, if any, is distributed as provided——

A. (interposing) It is prorated to the members in proportion to the patronage.

Q. In 1936 did you deal with non-members in the Supply Department?

A. In a small way we did.

Q. Were any funds prorated to them at the end of the year? A. Yes, sir. There——

Mr. Horrow (interposing): Just a moment! In speaking of proration are you referring to entries made on the books of petitioner, Mr. Roby?

The Witness: Well, I am trying to answer the question as it was asked, which is what we did. And—— [57]

Mr. Horrow (interposing): What does the word "Proration" mean to you? Does that mean "entries on the books" of petitioner?

The Witness: That's the way it would be represented.

Mr. Horrow: I will object, your Honor, upon the ground that the records of petitioner are the best evidence. I move that the witness's statement be stricken.

(Testimony of W. B. Roby.)

The Member: Well, he can testify to the fact that there were prorations. And I think he has already testified to that.

Mr. Horrow: I have no objection to testimony as to method.

The Member: All right. Overruled.

Q. (By Mr. Sapiro) Had you answered the question, Mr. Roby? A. Yes, sir.

Q. Then in 1937 was the same procedure followed as to feed? A. Yes, sir.

Q. Mr. Roby, what is that book?

A. This is the minutes book in which the record of the minutes is kept by the directors.

Q. The minutes of the Board of Directors?

A. Yes, sir.

Q. And you have examined those minutes?

A. Yes, sir.

Q. And you are familiar with the same? [58]

A. Yes, sir.

Q. You were present at the meeting?

A. Yes, sir.

Q. This book is the minutes book up to and including February 20, 1937? A. Yes, sir.

Q. And this other book that is marked "Minutes" is a continuation of the same?

A. A continuation of that record.

Mr. Sapiro: We might save time if I offered some individual resolutions that appear in these minutes, unless you want the witness to read them.

Mr. Horrow: Your Honor, I can't see the relevancy of this particular resolution that has been

(Testimony of W. B. Roby.)

shown to me to the issues in this case. It may be relevant on the question of tax exemption, but my understanding of the issues is that that is not involved in this case, and it is not relevant of the question of reserves.

Mr. Sapiro: It is relevant in this way, your Honor. It is our contention (and the allegations of the petition bear it out) that under the bylaws of this Association the net proceeds belong to the members, and also that it operates on a non-profit basis. There is some question in the cases as to whether there must be some act on the part of the Board of Directors appropriating the proceeds for [59] the purpose of establishing the fact that the credit has been duly entered.

The resolutions which we have here refer to that situation. They show two things:

1. That the non-profit operation by reason of the fact that members and non-members were to be treated alike, and

2. They show the actual appropriations.

That is, there are a series of resolutions providing for the fixing of the proration and the setting up of these funds which were provided for by action of the Board of Directors.

The Member: Well, it may be that with regard to those other issues it might conceivably be relevant. I agree with Mr. Horrow, however, that the only issues properly presented in this proceedings by the pleadings are those with regard to the re-

(Testimony of W. B. Roby.)

serves. And while I will overrule this objection I don't want counsel to understand that I consider that that other issue is before me.

Mr. Sapiro: I understand that very clearly, your Honor, and I advised counsel that I was offering them for the purpose of establishing the propriety of our claim as to the deduction for reserve.

The Member: All right. You don't object to these copies? [60]

Mr. Horrow: No, your Honor. I have no objection except that——

The Member (interposing): You just want to raise that point.

Mr. Horrow: I want to raise that point and make it clear that I am not conceding that the issue of tax exemption is in this case.

The Member: All right.

Mr. Sapiro: I understand that very clearly.

The Member: All right. The objection is overruled.

Mr. Sapiro: The first resolution from the meeting of December 21, 1936 is entitled "Patronage Dividend to Members and Non-members Alike".

The Member: It will be admitted in evidence.

The Clerk: Three.

(The copy of resolution so offered and received in evidence, was marked Petitioner's Exhibit No. 3 and was made a part of this record.)

Mr. Sapiro: The next resolutions are from the meeting of December 31, 1936, the resolution in

(Testimony of W. B. Roby.)

reference to setting up the reserve for loss by overpayment for eggs.

Mr. Horrow: No objection, your Honor.

The Member: It will be admitted in evidence.

The Clerk: Four.

(The resolutions of Dec. 31, 1936 [61] so offered and received in evidence, were marked Petitioner's Exhibit 4, and were made a part of this record.)

Mr. Sapiro: A resolution in reference to the patronage dividend.

The Member: Admitted in evidence.

The Clerk: Five.

(The resolution of patronage dividend so offered and received in evidence, was marked Petitioner's Exhibit 5, and was made a part of this record.)

Mr. Sapiro: And the resolution in reference to the setting up of Reserve for Zoning Hazard.

Mr. Horrow: No objection, your Honor.

The Member: It will be admitted in evidence.

The Clerk: Six.

(The Reserve for Zoning Hazard resolution so offered and received in evidence, was marked Petitioner's Exhibit 6, and was made a part of this record.)

Mr. Sapiro: And the resolution for Reserve for Security of Membership Fund.

Mr. Horrow: No objection.

The Member: It will be admitted in evidence.

(Testimony of W. B. Roby.)

The Clerk: Seven.

(The resolution for Reserve for Security of Membership Fund so offered and received in evidence, [62] was marked Petitioner's Exhibit No. 7, and was made a part of this record.)

Mr. Sapiro: From the minutes of the meeting of December 31, 1937 I would like to offer the resolution in reference to the establishing of credits in these funds.

The Member: Admitted in evidence.

The Clerk: Eight.

(The resolution re establishing of credits so offered and received in evidence, was marked Petitioner's Exhibit No. 8, and was made a part of this record.)

Mr. Sapiro: I would like to offer the resolution entitled "Security of Membership Fund".

The Member: Admitted in evidence.

Mr. Horrow: No objection.

The Clerk: Nine.

(The Security of Membership Fund Resolution so offered and received in evidence, was marked Petitioner's Exhibit No. 9, and was made a part of this record.)

Mr. Sapiro: Resolution entitled "Patronage Dividend".

The Member: Admitted in evidence.

The Clerk: Ten.

(The Patronage Dividend resolution so offered and received in evidence, was marked

(Testimony of W. B. Roby.)

Petitioner's Exhibit No. 10, and was made a part of this record.)

Mr. Sapiro: And resolution setting up the Reserve for [63] Zoning Hazard.

The Member: Admitted in evidence.

The Clerk: Eleven.

(The Reserve for Zoning Hazard Resolution, so offered and received in evidence, was marked Petitioner's Exhibit 11, and was made a part of this record.)

Mr. Sapiro: May it be stipulated that copies may be accepted in place of the originals, Mr. Horrow?

Mr. Horrow: As I understand it, the copies are in evidence.

The Member: They are in evidence.

Q. (By Mr. Sapiro) Mr. Roby, you are familiar with the resolutions that were adopted by the Board of Directors? A. Yes, sir.

Q. And as General Manager did you furnish to the Board the figures embodied in the resolutions which have been introduced?

A. Yes, sir.

Q. In the resolution marked "Exhibit 10" with reference to 1937, showing you that resolution as to patronage dividend, I note that there is a different rate of dividend provided for non-members and members. Will you state what the rate of dividend was?

Mr. Horrow: What does that go to, Mr. Sapiro? Does this go to the question of tax exemption?

(Testimony of W. B. Roby.)

Mr. Sapiro: No. This goes to the question of the [64] non-profit operation.

Mr. Horrow: I submit, your Honor, that there is nothing relating to that that bears on the issue of the deductibility of these amounts for reserves.

The Member: Sustained.

Mr. Sapiro: Does your Honor sustain that?

The Member: I sustained the objection.

Q. (By Mr. Sapiro) Mr. Roby, were the resolutions referred to creating the various funds—was the Security for Membership Fund created in the Association?

A. It was provided for in the bylaws.

Q. And was it carried on the books of the Association?

Mr. Horrow: I will ask that the books and records be submitted. The witness is not qualified to testify about the books, your Honor. The books are the best evidence.

The Member: I assume so, but that is a technical objection. It is not very often raised.

Are the books and records here, Mr. Witness?

The Witness: Yes.

Mr. Horrow: There is no dispute as to the figures, your Honor.

Mr. Sapiro: We have the accountant here. We don't have the original books. We have had him bring ledger pages. I talked with Mr. Horrow and told him we would have him bring these two weeks ago, and told him we would [64A] have him bring

(Testimony of W. B. Roby.)

the sample of ledger pages of individual producers showing the entries which we have.

Mr. Horrow: Yes. I am agreeable to his using copies or transcripts of the records, but as I understand it there is no dispute about the amounts at all.

Mr. Sapiro: No. There is no dispute about the amounts. The question wasn't directed to the question of amount. I asked him were those funds created. A. Yes.

Q. (By Mr. Sapiro) Would you state the circumstances under which the Reserve for Zoning Hazard was set up?

A. The plant of the Association was adjoined on the one side by residence property in which two different families resided. There being no zoning ordinance in the city giving us authority to operate there or forbidding us to operate there, they raised the question that the noise and dust and dirt created a nuisance and they threatened to have our operations stopped because of that nuisance. And the zoning hazard fund was set up because the directors felt that something would have to be done to meet this objection. They didn't know at the time exactly what would be the best way to meet it, but they were convinced that something would have to be done which would probably cost considerable money and be an expense that would be necessary to allow us to keep in operation. [65]

Q. Where were the funds obtained that constituted that fund?

(Testimony of W. B. Roby.)

A. Came from the overcharges to members.

Q. And when the deduction was made were the members credited with the deductions?

A. Yes, sir.

Q. And was that done in the year 1936? Were they credited for the deductions in the year 1936 of that year?

A. Well, I'm not—from memory I am not in a position to say just exactly when the setup was made.

Q. I mean, were those deductions that were made out of the net overcharges in 1936 credited on the books?

A. Yes, sir.

Q. To the individual members?

A. Yes, sir, I think they were at that time.

Q. Now, was that true also in 1937?

A. Yes, sir.

Q. Now, the fund for security of membership is provided for by the bylaws?

A. Yes, sir.

Q. And when those deductions are made are they credited to members?

A. Yes, sir.

Q. On the books?

A. Yes, sir.

Q. Mr. Roby, examining that form letter will you state what [66] that is?

A. That's a letter of information we send to all new members when they are accepted by the Board of Directors.

Q. That is sent to them with their membership certificate and one of these printed copies of the bylaws and the articles of incorporation?

A. Yes, sir.

(Testimony of W. B. Roby.)

Q. And that was sent in 1936 and 1937?

A. Yes, sir.

Mr. Sapiro: We would like to offer in evidence as petitioner's exhibit next in number this letter, and state that we believe this refers to the reserves and as to the nature of the member's interests as a binding obligation on the part of the Association in its interpretation of its agreements.

Mr. Horrow: Your Honor, I think the letter on its face simply shows that it is a letter of transmittal and attempts to summarize the benefits accruing under the bylaws and under the membership certificates. And I will object upon the ground that it has not been shown to be relevant of material to any of the issues in this case.

The Member: Objection overruled.

Mr. Horrow: Exception, please.

The Clerk: Twelve.

(The letter so offered and [67] received in evidence, was marked Petitioner's Exhibit No. 12, and was made a part of this record.)

Q. (By Mr. Sapiro) Mr. Roby, the Association does not pay any interest on its membership certificates, does it? A. No sir.

Mr. Sapiro: That is all, Mr. Horrow.

Cross Examination

Q. (By Mr. Horrow) Mr. Roby, you stated that the fund for Reserve for Zoning Hazard was set up. You did not mean to state that an amount of cash was set aside representing the amount in that reserve, did you?

(Testimony of W. B. Roby.)

A. The amount that was shown in that resolution was set up in our records, was set up as a fund which could be used for the purpose of covering any expense that might come because of that hazard.

Q. As a matter of fact, the moneys in the reserve or represented by the reserve were invested in assets of the petitioner, isn't that correct?

A. All of the moneys in the Association, as far as being separated in its use is concerned, were in one fund. They were in one bank account.

Q. So that there was no separation of any amount for this so-called Reserve for Zoning Hazard? [68]

A. The separation as to the use of the money was made and was set up, and the purpose for which it could be used was authorized.

Q. Now, what was the purpose for which it could be used?

A. It could be used to cover any expense that might accrue because of the hazard due to the complaint of a nuisance.

Q. You mean for the purpose of paying any expense that might be incurred in the future by the petitioner as a result of the change in the zoning?

A. Any expense that might accrue to the Association because of anything they might have to do to alleviate that nuisance.

Q. Was it intended that any amount represented by this reserve be paid to any member or any non-member?

(Testimony of W. B. Roby.)

A. If it wasn't used for the purpose that it was intended in the resolution and set up in the records it belonged to the members and would have to go to the members the same as every other fund, and they would have their interest in it no matter what it was used for, the same as every other fund.

Q. Would that be determined by action on the part of the Board of Directors, the subsequent payment of the amount represented by that reserve?

Mr. Sapiro: I don't quite follow that. What do you mean by that? You mean the type of payment or time of payment? [69]

Mr. Horrow: I will reframe my question.

Q. (By Mr. Horrow) Was it understood that the amount of reserve for zoning hazard would not be paid to any member or non-member of petitioner except upon action of the Board of Directors?

A. No money was ever paid to the members without authorization of the Board.

Q. Referring to the resolutions relating to the Patronage Dividend, calling your attention to Petitioner's Exhibits 5 and 10, were the amounts of those patronage dividends paid after the resolutions which are covered by those exhibits were adopted?

A. The portion—I would have to read this through to be sure I had answered correctly. I can state in a general way, however, that the dividends that were authorized by the Board of Directors were also paid as directed. If it was a cash dividend it was paid in cash, and if it was a dividend

(Testimony of W. B. Roby.)

for which certificates were issued, a certificate was issued according to their direction.

Q. Was any further act of the Board of Directors necessary before the amount of the patronage dividends covered by these resolutions would be paid?

A. No, sir. After they passed a resolution the order was carried out by the employees as directed.

Q. With respect to the Reserve for Zoning Hazard covered [70] by the resolutions contained in Petitioner's Exhibits 6 and 11, could the amounts covered by these resolutions be paid out to any members without any further act of the Board of Directors of the petitioner?

The Witness: What was the question?

(The question referred to was read by the reporter as above recorded.)

A. There is nothing in these resolutions directing anyone to pay anything to members. It was setting up this fund to be used for the purpose explained to you a moment ago and was taken from the overcharges that had been accrued through the season's business.

Q. (By Mr. Horrow) Referring to the Reserve for Security of Membership Fund covered by Petitioner's Exhibits 7 and 9, were those the reserves that are described in the bylaws of petitioner, page 27, Section 8? I show you the bylaws contained in Petitioner's Exhibits 1 and 2.

(Testimony of W. B. Roby.)

A. Now, the resolution—which one are you referring to?

Q. 7 and 9, the resolution relating to the Reserve for Security of Membership Funds.

A. Well, this Reserve for the Security of the Membership Fund is authorized and provided for in the bylaws, and the directors always before any patronage dividend was declared set aside that amount as belonging to the members to be placed in that fund for the purpose of protection against [71] loss and the supplying of capital working fund.

Q. That is covered by Section 8, page 27 of the bylaws? A. Yes, sir.

Q. And under the resolutions to which we have been referring, Petitioner's Exhibits 7 and 9, could any amounts represented by these reserves be paid to any member or non-member of petitioner without authorization of the Board of Directors?

A. No money of any kind from whatever fund it came from could be paid to the members without authorization of the Board of Directors.

Q. Referring to Petitioner's Exhibit 4, the resolution relating to Reserve Against Loss by Overpayments for eggs, what was the purpose of that resolution?

A. The year during—during that year the returns to the members for the eggs that were marketed showed that the members had not received all the proceeds that had been received by the As-

(Testimony of W. B. Roby.)

sociation. At the end of that year the directors authorized the payment of a portion of that amount as a final payment at the end of the year on eggs marketed. The balance of it, which is referred to in this resolution, was set up as a protection against the overpayment of eggs at sometime in the future. The money was admittedly the members' money the same as any other fund that we had.

Q. You mean to protect the petitioner against any return [72] of excessive amounts to the members for whom eggs were marketed by the petitioner?

A. There are many ways in which there might be a loss in the marketing of eggs. It is very uncertain as to just what the returns will be always, and there is never any assurance that the amount paid will be received because of various things that may happen in the quoted market and in the marketing of the eggs, including expenses which might some times be very much different than others.

Q. So this reserve is to protect the petitioner against any possible loss in the future resulting from a miscalculation of the market price quoted to the members and a miscalculation as to the expenses incurred, is that right?

A. I think that would explain it, because it provides for an overpayment for any reason.

Q. And no amount represented by this reserve would be paid out except pursuant to authorization of the Board of Directors, is that correct?

(Testimony of W. B. Roby.)

A. It is kept in the fund the same as every other fund. And I repeat: that nothing could be taken out of any fund and paid to any member without the authorization of the Board.

Q. And none of the amounts which were represented by these reserves were segregated in any way from any funds or other property held by the petitioner? [73]

A. Except in a bookkeeping way. All the funds we had was kept in one fund.

Mr. Horrow: That is all, your Honor.

Redirect Examination

Q. (By Mr. Sapiro) And the credits were put on the books to the individual producer in proportion to the deductions that had been authorized?

A. Yes, sir.

Q. And then the Board of Directors would determine the time of payment?

Mr. Horrow: Now, just a moment! I think that is argumentative, your Honor, and I think it is very leading.

The Member: I think the witness has already brought that out, has he not? That the Board of Directors determined absolutely the payment.

Mr. Sapiro: No. That is just the difference, your Honor. The Board of Directors does not determine—that was the thing that I objected to when he was talking about payment. That is, if the obligation is owing, but the time of payment might be fixed by the Board. And your Board has ruled that in

(Testimony of W. B. Roby.)

cases, which I can cite to you, but will not at this time unless you want them——

The Member (interposing): I will overrule the objection. He may answer. [74]

Mr. Horrow: I think the question is highly leading, your Honor.

The Member: Will you rephrase your question?

Mr. Sapiro: Oh, pardon me.

Q. (By Mr. Sapiro) After these credits had been placed on the books for the individual producers what do the Board of Directors have to do with reference to payment?

A. These credits that are placed to the credit of each individual member constitute a whole. If operations of the Association are such that the members are entitled to either a refund or a dividend, which means the payment of their own interest on them, it is authorized only by the Board of Directors.

Q. As to these particular interests in these funds——

Mr. Horrow (interposing): Now, I think he has answered the question.

The Member: He is asking another question now.

Mr. Horrow: It is the same one.

Q. (By Mr. Sapiro) As to these particular interests in these funds, are those interests fixed on the books? A. Yes, sir.

Q. And has the Board of Directors taken any action as to time of payment? A. No, sir.

(Testimony of W. B. Roby.)

Q. Have they adopted any policy concerning the same? [75]

A. I don't quite get your point. Do you mean have they fixed any time at which they shall be paid?

Q. Or any policy for the payment?

A. Well, the policy for payment is that they shall be paid whenever the condition of these funds is such that they can be paid without detriment to the Association as a whole.

Q. I think that policy is embodied in that resolution, Petitioner's Exhibit No. 9, is it not? Is that the resolution to which you refer?

A. Yes, sir.

Q. If the Association did not secure the funds in this way it would have to borrow from outside sources, would it?

Mr. Horrow: Objection to that upon the ground it calls for a conclusion and is leading.

The Member: Sustained on the latter ground.

Q. (By Mr. Sapiro) What other sources would the Association have for securing funds?

A. The only way we have been able to get any fund was to borrow it, outside of the ones we got from the members accumulated in this way.

Mr. Sapiro: That is all.

Recross Examination

Q. (By Mr. Horrow) Now, Mr. Roby, when credits were paid to the accounts of members for the amounts represented by [76] this Reserve for

(Testimony of W. B. Roby.)

Zoning Hazard, what was it understood would be done to these credits if the petitioner were obliged to expend moneys to relieve itself of any zoning restrictions?

A. If the money had to be expended for that purpose, of course it would be an expense and it would be an expense of operation; either that or it would be an expense for capital construction.

Q. Was it understood that the credits to the members for that reserve would be removed?

A. Removed from what?

Q. From the accounts of the members.

A. All the money that the members have in the Association may be used by the Association for purposes set up in the bylaws.

Mr. Horrow: That is all.

A. (continuing) If it is so used it still is the property of the members, but if the money is not used then it may be paid back to the members in the form of dividends, either cash or certificates, which must be authorized by the directors.

Q. (By Mr. Horrow) And that applies to all of the reserves, is that correct, Mr. Roby?

Mr. Sapiro: Mr. Roby, I don't know whether you brought——

Mr. Horrow (interposing): I think he understands [77] and I think this question is very much to the point, your Honor.

The Member: You can bring that out on redirect, Mr. Sapiro.

(Testimony of W. B. Roby.)

The Witness: What was the question?

Q. (By Mr. Horrow) And your answer would be the same with respect to the credits made in the same accounts to the other reserves to which we have referred?

A. I think so. There is no other way that you can get at them.

Mr. Horrow: That is all, your Honor.

Redirect Examination

Q. (By Mr. Sapiro) Mr. Roby, if the money is used to build another building does that wipe out the member's right to have that credit paid to him?

A. No, sir. It merely—his interest is still in the Association the same as before. The money, if it is used to build a building, the member's interest is in the building rather than in the cash fund.

Q. That is, if the money is invested in the assets, the assets are still there?

A. Yes, sir.

Q. But the obligation of the Association to him is not changed? [78]

A. No, sir.

Q. Might that money be paid to him from subsequent deductions in the building up of that fund?

A. Yes, sir.

Q. Are the funds operated on a revolving fund basis?

A. Yes, sir.

Q. And the theory of that is that——

Mr. Horrow (interposing): Now, just a moment.

Q. (By Mr. Sapiro) What is the theory of the revolving fund basis of operation, Mr. Roby?

(Testimony of W. B. Roby.)

A. The revolving fund or the theory of the revolving fund is that deductions or “retains” are taken from the members and put into this revolving fund to be used as working capital or capital for construction purposes, and as it is replaced it goes back to the member. Then it is built up to a certain point—well, let me explain it this way.

Certificates are issued quite largely as a representation of the member’s interests in those funds. A fund may be built up to any amount fixed by the directors before it starts to revolve. Then when that point is reached that is fixed by the directors for the fund to revolve, then it revolves by the calling or redemption of the older certificates, and new money is issued, or new certificates are usually issued in place of them. And by doing it that [79] way the amount of the funds are held constant.

Q. That is, from deductions of the newer members’ participations the older is retired?

A. Yes, sir.

Mr. Sapiro: That is correct.

The Member: Any other questions?

Mr. Horrow: No.

Witness excused.

Mr. Sapiro: Mr. Franzich, please.

MR. RALPH H. FRANZICH

called as a witness on behalf of the petitioner, was examined and testified as follows:

(Testimony of Ralph H. Franzich.)

The Clerk: State your name, please?

The Witness: Ralph H. Franzich, F-r-a-n-z-i-c-h.

Direct Examination

Q. (By Mr. Sapiro) Mr. Franzich, you are employed by the San Joaquin Valley Poultry Producers Association? A. Yes, sir.

Q. In what capacity? A. Accountant.

Q. And you were such in '36 and '37?

A. I was; yes, sir.

Q. You have got the figures as to the volume and value of eggs marketed in '36 and '37?

Mr. Horrow: Objection to that upon the ground that [80] it is not relevant to the issue relating to the reserves.

Mr. Sapiro: Well, I am just following the allegations of the petition.

The Member: I will overrule the objection.

Mr. Horrow: Exception, please.

The Member: Exception noted.

A. Both, yes.

Q. (By Mr. Sapiro) Yes. And, if you could, give the proportion of the member and non-member business so long as you have got that?

Mr. Horrow: The same objection.

The Member: The same ruling.

Mr. Horrow: Exception.

A. I left the proportion on the table there on the members' and non-members' business.

Q. (By Mr. Sapiro) Where would that be? In this (indicating)?

(Testimony of Ralph H. Franzich.)

A. No. That's it (indicating).

The Member: I understood the question called for the amount of eggs sold.

The Witness: The amount of eggs sold. In dozens?

Q. (By Mr. Sapiro) In dozens or value.

A. O. K. The eggs amounted to \$727,978.01.

Q. That is in 1936?

A. That's 1936, yes. And in 1937 \$971,044.88.

[81]

Q. Do you have the figures there as to the feed?

A. Sales?

Q. Yes. A. Yes, I do.

Q. Feed and supplies.

A. That's right. In 1936 \$687,666.84 and in 1937 \$905,329.07.

Q. And those are dollars? A. That's right.

Q. You have got the percentages in both divisions as to member and non-member business?

Mr. Horrow: The same objection.

The Member: I will reconsider my ruling and sustain the objection to that.

Mr. Sapiro: If your Honor please, we allege in our petition, which is denied, in giving the history of the situation that in the year 1936 petitioner transacted a volume of business with non-members—that is on page 3—representing a certain percentage of the volume of eggs marketed, and the various percentages are given. Denied for lack of information and belief.

(Testimony of Ralph H. Franzich.)

The Member: I was not familiar with that allegation.

Mr. Horrow: It isn't material, your Honor, to the issues on the reserves.

The Member: It is alleged in the petition and it is [82] denied by the respondent, and I will let the evidence in. I cannot see very readily how it is material to any of the five errors that are specifically alleged in the petition.

Mr. Sapiro: We will argue that in the brief.

The Member: As I indicated to counsel, of course, the case will be held to the errors that are alleged there.

You may answer the question, Mr. Witness.

A. You asked what percentage there was of non-member business?

Q. (By Mr. Sapiro) Yes.

A. In 1936 in the feed division there was 10.47 per cent non-member business.

Q. That is what you call the purchasing division?

A. That is in the purchasing division. That is right. In 1937 there was .52 per cent non-membership business. In the marketing division in 1936 non-member business amounted to 1.77 and in 1937 .11 per cent.

Q. And that represented the eggs?

A. That's right.

Q. Now, you have with you ledger sheets of individual members?

A. I think I do, yes.

(Testimony of Ralph H. Franzich.)

Q. Is this the copy you made at my request?

A. This is the ledger sheet there (indicating).

This is the copy here (indicating). [83]

Q. Oh, this is the copy (indicating)?

A. Yes.

Q. These are three individual members of the Association that you brought up as a sample?

A. Yes, it is.

Q. And the other members who were members during that period have similar ledger sheets?

A. They do.

Q. What do those entries represent? Take one ledger sheet, for instance. What have you got? G. Boriack?

A. G. Boriack, yes. The entries in each of these retains is the amount set aside to the credit of this individual member.

Q. And is that his proportion?

A. That is his proportion of the retains for that year and to be paid to him later on in cash.

Q. On what is that proportion based?

A. Based upon the volume; I mean to say the volume of business that he does with the Association. In other words, if he brings in 1 per cent of the eggs brought into the Association, why, a deduction will be made accordingly or a reserve be set aside.

Q. And when it is calculated, then it is placed in the ledger in that manner?

A. That's right. [84]

(Testimony of Ralph H. Franzich.)

Q. And was that done at the end of each year?

A. That has been done at the end of each year, yes.

Q. You were in charge of the books?

A. Yes.

Q. And the entries in '36 and '37 were made when? Immediately after the end of the year?

A. Right after the end of the year, yes.

Q. And have been on the books in that manner?

A. That's right.

Q. The other ledger sheets are of similar nature?

A. That's right.

Q. Just different producers?

A. That's right.

Q. And this is similar to all the ledger sheets of the respective producers? A. Yes.

Q. But different in amount?

A. That's right.

Mr. Sapiro: We would like to offer the three exhibits as one exhibit.

Mr. Horrow: No objection.

The Member: Accepted in evidence.

The Clerk: Thirteen.

(The three ledger sheets so offered and received in evidence, were marked Petitioner's Exhibit No. 13 [85] and were made a part of this record.)

Q. (By Mr. Sapiro) Do you have copies of these?

A. No. That's the only ones I have here. I can make up copies for you though.

(Testimony of Ralph H. Franzich.)

Q. What is this statement of Membership Equity which I show you in the name of G. Boriack?

A. It's a statement sent to the members at the end of each year showing them their interest in the Association and also the total interest that the Association owns.

Q. As regards the particular fund?

A. That's right.

Q. Is that taken from the books?

A. That is taken from the books.

Q. Is that the total of the amount in the books on the respective funds?

A. That's right. On that date.

Q. And that is sent to the members?

A. That is sent to the members.

Q. And this one, which is in the name of G. Boriack, is a sample copy of those which are sent to all members? A. That's right.

Q. They differ in the amount of interest in the fund? A. They do.

Mr. Sapiro: We would like to offer that in evidence as next exhibit. [86]

Mr. Horrow: No objection.

The Member: Accepted in evidence.

The Clerk: Fourteen.

(The statement referred to was received in evidence and marked Petitioner's Exhibit No. 14 and was made a part of this record.)

Q. (By Mr. Sapiro) Mr. Franzich, you prepared these figures that appear in the petition on

(Testimony of Ralph H. Franzich.)

page 6 in reference to the analysis of the per cent of business done from members and non-members and the distribution of net income?

A. I do prepare the figures, yes.

Q. You prepared those for those years?

A. For those years I prepared those figures for those years between the division of the members and non-members.

Q. And you have checked those?

A. I have checked those, yes.

Q. And those figures are a correct disposition of the fund?

A. That's right. They are correct.

Mr. Horrow: Pardon me. I would like to object to that testimony upon the ground of relevancy and materiality. I would like to call your Honor's attention to page 7 of the petition in which the petitioner prays "That the Board determine that the taxable net income for 1936 should be calculated at an amount not in excess of \$880.58, and that the taxable net income for 1937 should be calculated at an [87] amount not in excess of \$144.06.

I submit that there is no issue in this case about tax exemption.

Mr. Sapiro: Let me just read this. We have pleaded this matter in the alternative, and it says on page 5, "Therefore, the petitioner contends that the taxable net income for the years 1936 and 1937, if complete exemption is not allowed, can only be calculated in the following manner . . ."

(Testimony of Ralph H. Franzich.)

That is, it was our contention and it has been through all the phases of this proceeding that the complete exemption should be allowed, but that if by any reason the Board took the position that complete exemption should not be allowed then the only portion of income that was taxable was that percentage of the income that might be allocable on a percentage basis of the business done to the non-membership business. And we prepared the calculation for the information of the Board.

The question I am addressing to him does not concern that particular calculation, but does the distribution as to whether the funds were distributed in the particular manner set forth there, and I asked him that general question, with the consent of counsel, not as to its relevancy, but just as to the method of producing it, if relevant, for the purpose of simplifying the proceedings. [88]

Mr. Horrow: I will say, Mr. Sapiro, that I am not prepared to go into this gentleman's allocations and his determination of percentage of business with members and non-members, and I am wholly unprepared to go into the question of tax exemption.

I don't know what methods were used by the petitioner in determining member and non-member business and how they allocated expenses, and what was done in respect of the determination of the figures and the allocations that they reflect.

Mr. Sapiro: How could you refrain from being prepared for that when it runs right throughout this petition, Mr. Horrow?

(Testimony of Ralph H. Franzich.)

Mr. Horrow: For the simple reason that any fair construction of this petition would not lead anyone to believe that tax exemption is an issue.

The Member: Well, I will say, as I have said three or four times before, that so far as I am concerned the issues of this case are those set out specifically on page 2, paragraph 4, subdivision (a), (b), (c), (d) and (e), alleging five errors on the part of the Commissioner.

Mr. Sapiro: Yes. But your Honor, let me say as to that, we do allege that those are the five errors, that he refused to allow the deductions. Now, then, we go on and state the facts constituting the basis of our contention [89] that the refusal was erroneous, and in those facts we clearly set forth both the factor we claim that it is exempt from income, and that these particular moneys belong to the members and had been dedicated to them by appropriate action of the Association, both in its bylaws and by the action of the Board of Directors.

If this were an exempt corporation, then his failure to permit the deduction of the reserve is error. As I read the rules of the Board of Tax Appeals it says you shall state where the Commissioner has erred. Then you shall state the grounds of your objection to the Commissioner's action.

Now, we state that the Commissioner has erred in that he has refused to allow as deductible from gross income these amounts.

I don't want to take the time arguing the law of the

(Testimony of Ralph H. Franzich.)

case as to what constitutes proper deductions under the income tax exemption given to cooperative associations, but if he didn't allow a proper deduction then he committed error. So we have not misled anybody at any state of this case. After all, it certainly is not our desire to try a proceeding of this kind by misleading counsel.

We have at all times set forth in here the non-profit nature of the operation and the nature of the Association. [90]

We do say, and I might say this: That we made that contention before the various examining agents that had this matter in hand and we assume, of course, that the matter goes up through the department on their side the same way as the information comes up to us on our side, that the Association should be regarded as an exempt association, but that in any event, whether it is exempt or not, the only thing that was taxable was that proportion of the net income which could be allocable to non-member business on a proportionate basis, a method that the Commissioner has many times adopted in reference to cooperatives.

Now, all that I am asking this witness at this time is, Isn't it a fact that the particular amount set forth, not that that concludes support of the allegation, but are the particular amounts set forth the correct amounts as shown by his books? Here is a record prepared by him.

Mr. Horrow: Let me say that there were several reserves that were disallowed as deductions by

(Testimony of Ralph H. Franzich.)

the respondent. No mention of those reserves is made in the petition. So I can't understand counsel saying that the basis for the assignment of error in respect to the reserves is due to the fact that they contend that the petitioner is tax exempt. If that was their contention they would have taken up all the other reserves which are disallowed in the notice of deficiency. Anybody looking [91] at that prayer could not help but come to the conclusion that petitioner is conceding that it is taxable and wants its taxable net income reduced to the figures which it sets forth, as I have indicated, on page 7.

Mr. Sapiro: If that were the only issue, Mr. Horrow, then this evidence that I am now asking this witness is completely relevant to that issue.

Mr. Horrow: It is completely irrelevant, in my opinion.

Mr. Sapiro: Oh, no. If you claim that the only issue is that these should be the taxes, then we are asking him whether or not these figures are correct, which are the basis on which we calculate the request for that tax.

Mr. Horrow: I just state that my objection is, that the question of tax exemption is not an issue and the evidence is related to that issue and it is therefore irrelevant.

Mr. Sapiro: No, this evidence isn't, Mr. Horrow.

The Member: I agree with you perfectly in regard to your major contention, Mr. Horrow, but

(Testimony of Ralph H. Franzich.)

I am not prepared to say that this testimony is not relevant.

Mr. Horrow: Then I have no objection to letting it go in.

The Member: All right. With that understanding you may answer. [92]

Mr. Sapiro: You have no objection to my proving it in this method, other than its relevancy?

Mr. Horrow: No. I have no objection to your using summaries.

Q. (By Mr. Sapiro) I think the question was whether those figures as contained on page 6 of the petition are correct and accurate statements of the distribution of the funds. A. They are.

Q. Involved? A. They are.

Q. And the percentages?

A. They are correct.

The Member: That is, limiting it as reflected by the books of the corporation?

Mr. Sapiro: Yes.

Q. (By Mr. Sapiro) Limiting it as reflected by the books of the corporation and as ascertained by you from the books of the corporation?

A. That is correct.

Mr. Sapiro: That is all of this witness.

Mr. Horrow: Just one or two questions, your Honor.

Cross Examination

Q. (By Mr. Horrow) How did you treat Patronage Dividend on the books of petitioner? [93]

(Testimony of Ralph H. Franzich.)

A. What do you mean by that question?

Q. What entries were made when patronage dividends were declared or paid?

A. The members were credited with the amount of the declared dividend.

Q. Taking the exhibit which is in evidence, the ledger sheets which you have identified, are they any items on those sheets that reflect patronage dividends?

A. They are patronage dividends.

Q. You consider that all of those amounts are patronage dividends? A. That's right, sir.

Q. I show you the resolution, Petitioner's Exhibit 10, Patronage Dividend, and ask you to point out the entries that were made in that account by reason of that resolution?

A. They were made on this account here?

Q. Yes, the accounts that you have.

A. They are not on this account here.

Q. What account are they in?

A. There is a separate ledger sheet for them also, and the 25 per cent of it was paid to them in cash and the other is paid to them as the fund grows up.

Q. Do you have a sample of that other ledger sheet to which you have reference?

A. Not with me. No, I haven't. [94]

Q. At any rate the amounts covered by resolution, Petitioner's Exhibit 10, are not reflected in any way on the ledger sheet?

(Testimony of Ralph H. Franzich.)

A. Not on that ledger sheet there, no.

Q. And the same is true with respect to the patronage dividend covered by the resolution contained in Petitioner's Exhibit No. 5, which I show you?

A. That's right.

Q. Will you explain this column "Contingencies" which appears on the exhibit covering the ledger accounts? What items are credited to those accounts, to those columns?

A. Items so decreed or passed by the board.

Q. What is the nature of the items which appear as credits in the column headed "Contingencies"?

A. What is the nature of it? I don't quite get you.

Q. What type of items appear as reflect the credits in that column? I ask you whether or not there was a reserve for legal and auditing expense during the year 1936.

A. I think there was. Now, I won't say that.

Q. And the items represented by that reserve appear as credits in the column "Contingencies", isn't that correct?

A. No, sir.

Q. What items appear in this column "Contingencies"?

Mr. Sapiro: I think it is obvious that there is no '36 item in these contingencies.

Mr. Horrow: He is describing the——[95]

Mr. Sapiro (Interposing): I mean you asked him first about legal and auditing expense of '36.

Mr. Horrow: Well, there was one for '37.

(Testimony of Ralph H. Franzich.)

Mr. Sapiro: But there is no item of Contingency in '36 or '37.

Q. (By Mr. Horrow) Can you explain what this column "Contingencies" is used for?

A. It is used to set up the credit which the directors have authorized to these members for overcharges through patronage.

Q. Why is the account headed "Contingencies"?

A. It is so decreed by the directors.

Q. You mean to say that that account was set up by action of the Board of Directors?

A. It is set up by resolution.

Mr. Horrow: I won't take up any more of your Honor's time on this.

Q. (By Mr. Horrow) Referring now to the statement of membership equity, isn't it a fact that the total of these amounts which appear on these statements sent out to members, that total is equal to the difference between the book value of the assets and the liabilities of petitioner?

A. That's right.

Mr. Horrow: That's all, your Honor.

The Member: Any redirect? [96]

Redirect Examination

Q. (By Mr. Sapiro) I understand you to say that there are separate ledger sheets covering other accounts? A. There are, yes.

Q. When you said "total of the book value of assets and liabilities" of the petitioner, what did you mean by that?

(Testimony of Ralph H. Franzich.)

A. Repeat that again.

The Member: What did you mean by saying "total of book value of assets"?

Q. (By Mr. Sapiro) Mr. Horrow asked you whether or not some total represented the difference between the book value of the assets and liabilities of petitioner. What do you mean by that?

A. I don't get the question yet, to be frank with you.

Q. Did you understand the question?

A. I must have misunderstood his question, then.

Q. To what amounts did he point as the total? The total of the sums of these various funds?

A. This is the capital belonging to the members.

Mr. Horrow: The total of all those amounts represents the net worth as shown by the books of petitioner?

The Witness: That's right.

Mr. Horrow: I think he understood, your Honor.

The Member: Any other questions?

Mr. Horrow: I have no further questions. [97]

Mr. Sapiro: That is all.

Witness excused.

The Member: Petitioner rests?

Mr. Sapiro: Petitioner rests.

The Member: Respondent rests?

Mr. Horrow: Respondent rests.

The Member: Briefs will be filed: Opening briefs forty-five days and reply briefs in thirty days.

Hearing concluded.

[Endorsed]: U. S. B. T. A. Filed Jul. 8, 1941. [98]

PETITIONER'S EXHIBIT No. 1
SAN JOAQUIN VALLEY POULTRY
PRODUCERS ASSOCIATION
BY-LAWS [99]

State of California
Department of State

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that I have carefully compared the transcript, to which this certificate is attached, with the record on file in my office of which it purports to be a copy, and that the same is a full, true and correct copy thereof. I further certify that this authentication is in due form and by the proper officer.

In Witness Whereof, I have hereunto set my hand and have caused the Great Seal of the State of California to be affixed hereto this 3rd day of June, A. D., 1925.

[Seal]

FRANK C. JORDAN,

Secretary of State

By FRANK H. CORY,

Deputy. [100]

Petitioner's Exhibit No. 1 (Continued)

Articles of Incorporation
of
San Joaquin Valley
Poultry Producers Association

Know All Men by These Presents:

That, we, the undersigned, all of whom are residents of the County of Tulare, State of California, engaged in the production, packing and marketing of agricultural products, have this day associated ourselves together for the purpose of forming a non-profit co-operative association under the provisions of Title 23, Part IV, Division One of the Civil Code of the State of California, and we do hereby certify:

I.

That the name of the Association shall be:

“San Joaquin Valley Poultry Producers Association.”

II.

That the purposes for which said Association is formed are as follows:

To engage in any activity in connection with the production, marketing, selling, packing, grading, storing, handling or utilization of any poultry eggs, or other agricultural products produced or delivered to it by its members, or by non-members, to an amount not greater in value than the value of such products as are dealt in or handled by it for its own members;

Petitioner's Exhibit No. 1 (Continued)

To engage in any and all said activities with reference to the by-products of any such agricultural products;

To purchase, transport, sell, handle, deal in all supplies, trademarks and patents, machinery and equipment useful or necessary to the production,

[101]

marketing, care, maintenance or protection of any of said agricultural products;

To engage in any activity in connection with the purchase, hiring or use by its members of supplies, machinery, and equipment, or in the financing of any such activity;

To borrow money;

To loan and advance money to the members of the Association in connection with any of the said activities upon adequate security;

To establish reserves, and to invest the funds thereof in bonds, or any such other property or security as may be provided in the By-Laws;

To buy, hold and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the Association, or incidental thereto;

To levy assessments in the manner, and in the amount as may be provided in its By-Laws;

To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes, or the attainment of any one or more of the subjects herein enumerated, or conducive to, or

Petitioner's Exhibit No. 1 (Continued)

expedient for the interests or benefit of the association, and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the Association is organized, or to the activities in which it is engaged.

This Association shall conduct and carry on its business without profit to itself, and shall not make, declare or pay to its members any dividend on membership certificates. It may, however, use or employ any of its facilities for any purpose, and the proceeds arising from such use and employment shall go to reduce the costs of operation for its members and products of non-members similar to the products handled for its members may be dealt in to an amount not greater in value than such as are handled by it for its members.

III.

That the place where the principal business of the Association will be transacted is the City of Porterville, Tulare County, California. [102]

IV.

That the said corporation shall have perpetual existence, and that the term for which said corporation is to exist, is perpetual.

V.

That the number of Directors of the said Association shall be seven, all of whom shall be members of the Association.

Petitioner's Exhibit No. 1 (Continued)

1. One Director shall be a member residing in the Madera District comprising all of Madera County, and shall be elected by the members of said Madera District.

One Director shall be a member residing in Fresno District comprising all of Fresno County except that portion lying south of the Kings River and including that portion of Tulare County lying north of the Kings River and including that portion of Kings County lying north and west of the Kings River, and shall be elected by the members of said Fresno District.

Four Directors shall be members residing in the Porterville District comprising all that territory in the San Joaquin Valley not included in the Madera and Fresno Districts, and shall be elected by the members of said Porterville District.

One Director shall be a Director-at-Large elected by all the members and may reside in any of the Districts.

2. The term of office of the Director-at-Large shall be for one year and he shall be elected annually; the term of office of all other Directors shall be for two years; provided, however, that at the first annual election after the adoption of this amendment three Directors shall be elected for two years, one of whom shall be from the Fresno District and two from the Porterville District and three Directors shall be elected for one year, one of whom shall be from the Madera District and two from the Porterville District, with the further proviso that

Petitioner's Exhibit No. 1 (Continued)
of the Directors elected from the Porterville District the two receiving the highest number of votes shall be elected for the two year term and the other two for the one year term; and that at all subsequent annual elections all retiring Directors except the Director-at-Large shall be replaced by the election of an equal number from the same district for the full term of two [103] years, and until their successors are elected and qualified.

That the names and residences of those who are to serve as incorporating Directors and until their successors are elected and qualified are as follows:

H. S. Williams, Porterville, California.

C. A. Cohenour, Porterville, California.

L. R. Longley, Porterville, California.

F. M. Crabtree, Porterville, California.

Elmer DeMott, Porterville, California.

VI.

The property rights and interest of each member in the property and assets of the Association shall be unequal; in the event of liquidation of the affairs of the Association the assets of the Association shall be distributed in accordance with the following rule:

If at the end of the period for which this Association is organized the members do not elect to continue the Association, or if at any other period prior thereto the members shall elect to discontinue the operation of the business of the Association, the Directors with the consent of two-thirds of the

Petitioner's Exhibit No. 1 (Continued)

members of the Association, shall sell the assets and property of the Association, and shall apply the proceeds upon the indebtedness and liabilities of the Association in the following order of priority:

1st. They shall pay all indebtedness and liability of the Association other than that represented by the Feed Finance Fund, the Advance Fund and the Membership Fund.

2nd. If, thereafter, there shall be any remainder, and only in such event, they shall pay pro-rata the holders of Feed Finance and Fund Certificates and Advance Fund Certificates not to exceed the face value thereof, together with all accrued interest.

3rd. If, thereafter, there shall be any remainder, and only in such event, they shall divide and pay in equal amounts to each member of the Association an amount not to exceed the face value of the Membership Certificates.

4th. If, thereafter, there shall be any remainder, and only in such event, they shall pay [104] pro-rata to the holders of the Feed Finance Fund Certificates and Advance Fund Certificates outstanding all of the balance of the assets of the Association; such payments shall be pro-rated to the members in accordance with the amount of purchases from the Association made by each member during the period in which such Feed Finance Fund Certificates and Advance Fund Certificates may have accumulated.

VII.

The Association shall issue to each member a certificate of membership; but neither said member-

Petitioner's Exhibit No. 1 (Continued)

ship nor said certificate may be assigned by any member or by act of law; nor shall any assignee or transferee thereof receive or be entitled to any rights or interests in the Association unless the Board of Directors expressly authorizes such assignment or transfer, and expressly accepts the said assignee or transferee as a member of the Association.

The Association, by action of the Board of Directors, shall have the full right to purchase the full interest of any member in the property or other rights of the association, at the book value thereof, whenever, in the judgment of said Board, it is in the general interests of the Association so to do, and the statement of book value thereof by the Board of Directors, shall be conclusive. Any member whose rights are so purchased shall cease to be a member of the Association and his Membership Certificate shall thereupon be cancelled.

VIII.

The Association may provide in its By-Laws the terms and conditions upon which membership may be transferred or assigned and conditions upon which, and the time when, membership may cease, and the mode, manner and effect of the expulsion of a member, and the method, time and manner of withdrawal, and the right of members to vote by proxy or by mail and any other thing in furtherance of, but not in conflict with, these articles.

Petitioner's Exhibit No. 1 (Continued)

In Witness Whereof, we have hereunto set our hands on the 26th day of May, 1925.

H. S. WILLIAMS

C. A. COHENOUR

F. M. CRABTREE

L. R. LONGLEY

ELMER DEMOTT [105]

State of California,
County of Tulare—ss.

On this 26th day of May, in the year One Thousand Nine Hundred and Twenty-five, before me, Alice Deleray, a Notary Public in and for the County of Tulare, personally appeared H. S. Williams, C. A. Cohenour, L. R. Longley, F. M. Crabtree and Elmer DeMott, known to me to be the same persons whose names are subscribed to the within instrument, and they duly acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the County of Tulare, the day and year in this certificate first above written.

ALICE DELERAY,

[Seal]

Notary Public in and for the
County of Tulare, State of
California.

State of California,
County of Tulare—ss.

I, Gladys Stewart, County Clerk of the County of Tulare, State of California, and ex-officio Clerk

Petitioner's Exhibit No. 1 (Continued)
of the Superior Court in and for said County, hereby certify the within and foregoing to be a full, true and correct copy of the original Certified Copy of Articles of Incorporation as the same now remains of record and on file in my office in the therein entitled matter.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the above named Court this 6th day of June, 1925.

GLADYS STEWART,

Clerk.

By TROY OWEN,

Deputy Clerk. [106]

By-Laws

of

San Joaquin Valley

Poultry Producers Association

Article I

Name, Place and Purpose

Section 1. The name of this Association is and shall be the San Joaquin Valley Poultry Producers Association.

Section 2. The principal place of business shall be Porterville, Tulare County, California.

Section 3. The purpose of this Association is to provide for its members a collective system of marketing of poultry, poultry products or other agricultural products; to furnish to them any feed, seed or supplies, and to the end of lessening the cost of such service, to do the same things for those who

Petitioner's Exhibit No. 1 (Continued)
are not members, all of which is more particularly
set forth in the Articles of Incorporation.

Article II

Corporation Seal

Section 1. The corporation Seal shall consist of
a circle, having within its circumference the words,
"San Joaquin Valley Poultry Producers Associa-
tion, Incorporated June 3, 1925."

Article III

Members and Their Relation to the Association

Membership

Section 1. The Association does and shall con-
sist of poultrymen and other agricultural producers
who shall have been duly elected and shall have paid

[107]

the membership fee of Ten (\$10.00) Dollars. No
member shall hold more than one membership.

Eligibility

Section 2. Membership in the Association shall
be limited to such persons, firms, Associations or
Corporations as are engaged in the production of
eggs, poultry or other agricultural products, includ-
ing lessees and tenants of land used for the produc-
tion of such products, and any lessors or landlords
who receive as rent all, or part of the production
from such leased premises.

Membership Fee

Section 3. The membership fee shall be Ten
(\$10.00) Dollars and must be paid in cash at the
time application for membership is made. Appli-

Petitioner's Exhibit No. 1 (Continued)

cants for membership shall deposit the membership fee of Ten (\$10.00) Dollars and file a written application with the Secretary in which he, she or it agrees to be bound by the By-Laws of the Association and to which he, she or it thereby subscribes. If application is accepted by the Board of Directors, the applicant becomes a member in good standing and is entitled to all the benefits of the Association and shall be bound and engaged by the By-Laws of the Association; if the application is rejected all moneys shall be returned.

Assignment of Membership

Section 4. No membership nor any certificate of membership shall be assigned by any member to any other person, nor shall a purchaser at execution sale or any other person who may succeed by operation of law or otherwise, to the property interests of a member be entitled to membership or become a member of the Association by virtue of such transfer.

The Board of Directors of the Association may, however, consent to any assignment or transfer and the acceptance of the assignee or transferee as a member of the Association shall make such assignee or transferee a member of the Association and such assignee or transferee, when accepted, shall be bound by the By-Laws of the Association.

Withdrawal of Membership Fee

Section 5. No membership fee may be withdrawn from the Membership Fund by any member except the Board of Directors may deem it ad-

Petitioner's Exhibit No. 1 (Continued)
vis- [108] able and at their discretion redeem such membership to the Association.

Member May Be Expelled

Section 6. If in the judgment of a majority of the Directors, the conduct of any member has been injurious to the Association, the said Board of Directors, after preferring charges and giving a hearing upon fifteen days' notice, shall, by a concurrence of five Directors, have the power to expel such member; an expelled member may, however, upon a petition signed by a majority of all the members of the Association, be reinstated.

In all cases an expelled member shall within thirty (30) days receive the amount of his Membership Fee and the amount of any Feed Finance Fund Certificates or Advance Fund Certificates or other indebtedness due him by the Association, less any indebtedness or loss to the Association caused by him.

Deceased Member

Section 7. The Directors shall determine the mode and manner of the settlement of a deceased member's account and the time of payment in such cases and also the mode and manner of succession to membership and the transfer of Membership Certificate.

Annual Meeting of Members

Section 8. The Annual Meeting of members of the Association shall be held on the third Monday of February of each year, at the main office of the

Petitioner's Exhibit No. 1 (Continued)

Association, commencing at ten o'clock A. M., provided, however, that the Directors may, at their discretion, change the meeting to some other place and to some other hour, by giving due notice of such change in the regular Annual Meeting notices which are to be mailed to each member, as provided for elsewhere in these By-Laws. No matter shall be voted upon at said meeting which has not been previously submitted to the members.

Notice of Business to Be Transacted

Section 9. Any member desiring to have any matter of business acted upon by vote of members at any Annual Meeting shall prepare and present such matter in proper written form to the Secretary of the Association on or before twenty (20) days prior to the day fixed for said Annual Meeting. [109]

Special Meeting of Members

Section 10. Special meetings of the members may be called by the President of the Association or by a majority of the Board of Directors, and shall be called upon the written request of one-tenth (1-10th) of all the members; when a written request signed by one-tenth (1-10) of all the members shall have been filed with the Secretary asking to have a special meeting called for any purpose it shall be mandatory with the Directors to send proper legal notice to all members within fifteen (15) days after having received such written notice.

All such calls shall be in writing and shall state the time and place and purpose of such meeting.

Petitioner's Exhibit No. 1 (Continued)

No business shall be transacted at any special meeting other than as is stated in the purpose of the call.

Notice of Annual Meeting

Section 11. Notice of the Annual Meeting of members shall be given, stating the time and place of the meeting; this notice must contain an itemized list of all matters that may be voted upon at such meeting; a copy of such notice shall be mailed to each member as his, her or its address shall appear on the books of the Association, at least ten days prior to the time for holding such meeting.

Notice of Special Meetings

Section 12. Notice of special meetings of members shall be given by mailing to each member, as his, her or its address shall appear on the books of the Association, a copy of the call for such meeting, at least ten days prior to the time fixed for such meeting.

Quorum

Section 13. At any meeting of members of the Association, ten (10) per cent of all of the members, represented either in person or by proxy, shall constitute a quorum for the transaction of business.

Vote

Section 14. Each member shall have at least one (1) vote and shall have one (1) additional vote for each Ten (\$10.00) Dollars of Advance Fund Certificates or Feed Finance Fund Certificates held by said member except that no vote shall be allowed

Petitioner's Exhibit No. 1 (Continued)
for any Advance Fund Certificates or Feed Finance
[110]

Fund Certificates acquired by transfer or assignment direct or indirect or by operation of law.

All voting by ballot, whether mailed ballot or otherwise, shall be based on both membership, Advance Fund Certificates and Feed Finance Fund Certificates as provided in preceding paragraph.

All other voting shall be based on membership only.

Any member shall have the right to demand a vote by ballot unless the matter under consideration is specifically provided for in these By-Laws.

Cumulative Voting Prohibited

Section 15. Cumulative voting is hereby expressly prohibited at all elections held by this corporation.

Referendum

Section 16. Ten (10) per cent of all the members may invoke the referendum on any matter decided at any meeting of members where the deciding vote cast was less than a majority of all members of the Association.

Property Rights

Section 17. The property rights and interest of each member in the property and assets of the Association shall be unequal, and in the event of liquidation of the affairs of the Association the assets shall be distributed in accordance with the rules set forth in Article IX of these By-Laws.

Petitioner's Exhibit No. 1 (Continued)

Article IV
Corporate Powers
Directors

Section 1. Except such as are reserved by statute or these By-Laws to be exercised by the Association as a whole, the corporate powers of this Association are, and shall be vested in a board of seven (7) Directors, all of whom shall be members of the Association, actively engaged in some branch of poultry raising and shall be actively supporting the Association by using its facilities in the operation of his business. [111]

Directors Represent Districts

Section 2. One Director shall be a member residing in the Madera District comprising all of Madera County, and shall be elected by the members of said Madera District.

One Director shall be a member residing in the Fresno District comprising all of Fresno County except that portion lying south of the Kings River and including that portion of Tulare County lying north of the Kings River and including that portion of Kings County lying north and west of the Kings River, and shall be elected by the members of said Fresno District.

Four Directors shall be members residing in the Porterville District comprising all that territory in the San Joaquin Valley not included in the Madera and Fresno Districts, and shall be elected by the members of said Porterville District.

One Director shall be a Director-at-Large elected

Petitioner's Exhibit No. 1 (Continued)

by all the members of the Association and may reside in any of the Districts.

Term of Office of Directors

Section 3. The term of office of the Director-at-Large shall be for one (1) year and he shall be elected annually; the term of office of all other Directors shall be for two (2) years; provided, however, that at the first annual election after the adoption of these By-Laws, three (3) Directors shall be elected for two (2) years, one of whom shall be from the Fresno District and two (2) from the Porterville District, and three (3) Directors shall be elected for one (1) year, one of whom shall be from the Madera District and two from the Porterville District, with the further proviso that of the Directors elected from the Porterville District the two receiving the highest number of votes shall be elected for the two year term and the other two for the one year term; and that at all subsequent annual elections all retiring Directors except the Director-at-Large shall be replaced by the election of an equal number from the same district for the full term of two (2) years and until their successors are elected and qualified.

Qualifying of Directors

Section 4. The newly elected Directors shall on or before entering upon the duties of the office, subscribe to the following obligation, written in the Minute Book of the Association:

"The undersigned having been duly elected as a Director and officer of the San Joaquin Valley

Petitioner's Exhibit No. 1 (Continued)

Poultry Producers Association, at the election held
 , do promise to faithfully and
 honestly perform the duties of said office, and to
 advance and support the best interests of the As-
 sociation.

"Signed this day of

"

Organization

Section 5. Within one week following their elec-
 tion, the Directors shall meet, qualify and organize
 by electing a President, and one or more Vice-
 Presidents from among their number; they shall
 also elect a Secretary, a Manager and a Treasurer,
 who may or may not be members of the Association
 or of the Board of Directors, and they may select
 whatever other officers or employees they deem
 necessary.

Meetings of Directors

Section 6. The Board of Directors shall hold
 regular monthly meetings on such date as may from
 time to time be fixed by resolution of its said Board,
 notice of which shall be given to the members by
 publication in the Association's monthly bulletin or
 other suitable publication or publications published
 in the territory in which the Association members
 reside.

Special meetings of said Board of Directors shall
 be held upon the call of the President, or upon the
 request of a majority of the Directors, and notice
 of not less than twenty-four (24) hours shall be

Petitioner's Exhibit No. 1 (Continued)

given to each member of the Board of Directors of any and all special meetings, unless such notice be waived in writing.

Vacancies

Section 7. Vacancies occurring in the Board of Directors shall be filled by appointment of the Directors from the District in which the vacancy occurs or the Board of Directors may call a special meeting of the members in that District for the purpose of filling said vacancy; in the event a Director is legally recalled, the vacancy is filled by recall petition or election naming new Director or Directors. [113]

Recall

Section 8. Any member may bring charges against an officer or Director from his, her or its District by filing them in writing with the Secretary of the Association, together with a petition signed by twenty (20) per cent of the members of said District, requesting the removal of the officer or Director in question. The removal shall be voted upon at a special meeting of the members of said District which shall be called for the purpose by the Directors, and by a majority vote, voting by ballot, the members of the District may remove the officer or Director and fill the vacancy.

The Director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting, and shall have an opportunity at the meeting to be heard in person, or by counsel, and to present witnesses, and the

Petitioner's Exhibit No. 1 (Continued)

person or persons bringing the charges against him shall have the same opportunity.

Forfeiture of Office

Section 9. The absence of a Director from three (3) consecutive regular meetings (unless from some unavoidable cause to be determined by the Board of Directors) shall be deemed to be and shall act as a resignation, and the Directors may proceed to fill the vacancy until the next regular Annual Meeting of the members of the Association.

Quorum

Section 10. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any Directors' meeting.

No Director shall be entitled to vote upon any question of his or a relative's employment, or upon any question in which he is financially interested other than as a member of the Association.

A concurrence of a majority of all Directors shall be necessary for the transaction of business involving an officer or an office, and expenditure of money other than in the regular and ordinary course of business or a capital investment of money exceeding Five Hundred (\$500.00) Dollars.

Powers and Duties of the Directors

Section 11. The Directors shall have the power and it shall be their duty: [114]

1st. To convene all regular meetings of the Association, and to call special meetings of the Association upon the written request of ten (10) per

Petitioner's Exhibit No. 1 (Continued)

cent of the members, or when they may deem it necessary.

2nd. To admit or reject members.

3rd. To appoint or remove and have control of such subordinate agents, employees and officers as the business may require, prescribe their duties, fix their compensation, and require from persons appointed to any office or employment, having the receipt, management or expenditure of money or goods of value on account of this Association, such security or bond as they may deem necessary.

4th. To make rules for the management of the business of the Association and any branches of the business in which the Association may engage.

5th. To enter into any and all contracts essential to the transaction of its affairs, for the purpose for which it was formed; to borrow money and to issue all such notes, mortgages, or other evidences of indebtedness or security for indebtedness, as may be necessary to properly conduct the business of the Association and to transact all of the business of the Association in its proper corporate name.

6th. To act on all grievances and complaints and to consider and determine the same.

7th. To attend all meetings of the Association.

8th. To cause to be kept a complete record of all their proceedings and acts, and also the proceedings of the Association.

9th. To cause the business of the Association to be regularly entered in the proper books in such manner and in such form that it can be determined

Petitioner's Exhibit No. 1 (Continued)

at any time, the correct financial condition of the Association and what portion of the receipts from all sales, after deducting operating expense, overhead and duly authorized reserves or other proper deductions, properly belongs to each and every member.

10th. To make the members of the Association a full report annually showing the receipts and disbursements during the year, with a complete statement of assets and liabilities. [115]

11th. To annually take stock of all corporate property and business and cause a statement of the accounts of the Association, with all necessary vouchers, up to the first day of January of each year, to be made out and laid before the regular Annual Meeting of the Association.

12th. To cause to be issued Certificates of Membership.

13th. To fill all vacancies occurring in any office of the Association until the first regular annual meeting of the Association following such vacancy except as otherwise provided by statute or these By-Laws.

14th. To employ an expert accountant to expert the books and accounts quarterly and submit once each year, after January first, a report of the year's business to the members at the Annual Meeting of the Association.

15th. To create and maintain an Advance Fund and to deduct or cause to be deducted from the proceeds of sale of each member's eggs such an amount, not exceeding one (1) cent per dozen, as they may

Petitioner's Exhibit No. 1 (Continued)

deem advisable, to be applied to the creation and maintenance of the said Advance Fund as provided for in these By-Laws, and to issue or cause to be issued duly authorized Advance Fund Certificates to each member covering such deductions.

16th. To create and maintain a Feed Finance Fund as provided for elsewhere in these By-Laws, and to issue or cause to be issued "Feed Finance Fund" Certificates to each member as his, her or its prorated interest may be, as determined by said member's purchases from the Association during the period covered by the computation and as provided for in these By-Laws.

17th. To consent to, or for proper cause to restrict or make provision for the restriction of the transfer or assignment of Advance Fund or Feed Finance Fund Certificates or any other certificates of interest in any fund held by it; provided, however, that action in the premises may be taken by any committee or officer authorized so to do by the Board of Directors.

18th. To create and maintain a Reserve Fund for security of the Membership Fund, as authorized in these By-Laws or by proper resolution duly adopted to create and maintain any other Reserve Fund or Funds for any purpose and in whatsoever [116] amount they may deem advisable for the best interests of the Association.

19th. After making such financial provisions as are directed by these By-Laws and as they deem for the best interest of the Association, and as the business of the Association may warrant, to refund

Petitioner's Exhibit No. 1 (Continued)

to the members in proportion to the amount of business done by each with the Association, the balance of any overcharges from sales, all as provided for elsewhere in these By-Laws.

20th. To select one or more banks to act as depository of the funds of the Association and to determine the manner of receiving, depositing and disbursing the funds of the Association and the form of checks and the person or persons by whom same shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.

21st. To surrender to their successors who have been duly elected and qualified, the custody of all of the records or property of the Association.

22nd. To levy assessments whenever required to pay outstanding obligations of the Association, or maintain and carry on the business of the Association, to provide the time, manner and place of payment of any such assessment and the mode or manner of securing or enforcing payment thereof; to collect any such assessment either by action at law or by sale of the Membership Certificate of any delinquent member and if collected by sale of the Membership Certificate, to provide the time, place and manner of sale, and the sale of any Membership Certificate shall forfeit all the right, title and interest of the delinquent member in the property and assets of the Association, but shall not relieve the Association of its obligation under any outstanding Advance Fund Certificate held by said delinquent member.

Petitioner's Exhibit No. 1 (Continued)

23rd. The Directors of the Association shall receive such compensation for their time and such remuneration for their traveling expenses as the said Board of Directors may at their discretion allow, provided, however, that no Director shall receive any compensation except for time actually spent in attendance at a regular or special meeting of the Directors and for miles actually and necessarily traveled in attending such regular or special meetings of Directors, and provided further that no Director shall receive in excess of Five (\$5.00) Dollars [117]

lars in any one month for his time nor more than five (5) cents per mile for miles necessarily and actually traveled in attending regular or called meetings of said Board.

24th. To perform and do all other necessary acts to be done for the purpose of carrying into effect the object for which this Association was formed.

Article V

Executive Committee

Appointment

Section 1. The Board of Directors may appoint or provide for the appointment of an Executive Committee to consist of as many of its members as it may designate. The Executive Committee shall conduct the business and affairs of the Association during the interim between Board Meetings but subject to the general control of the Board of Directors.

Petitioner's Exhibit No. 1 (Continued)

Minutes and Records

Section 2. It shall be the duty of the Executive Committee to keep full minutes and records of all of its acts and proceedings and submit the same to the Board of Directors for approval.

Powers Granted

Section 3. The Executive Committee may perform such duties and have such powers as may from time to time be delegated to it by resolution of the Directors, limited only by statute and these By-Laws.

Vacancies

Section 4. Vacancies in the Executive Committee shall be filled by the Board of Directors.

Article VI

Officers

Section 1. The officers of this Association shall be a President, one or more Vice-Presidents, a Secretary, a Manager and a Treasurer.

The President and Vice-Presidents shall be chosen from among the Directors and shall serve for a term of one year. [118]

The Secretary and the Manager and Treasurer may or may not be members of the Association and more than one may be combined and held by one person, and they shall serve at the will and pleasure of the Directors.

President

Section 2. The President shall be the executive head of the Association; he shall preside at all

Petitioner's Exhibit No. 1 (Continued)

meetings of the Association and at all meetings of the Board of Directors; he shall sign all Certificates of Membership, contracts, conveyances and all documents and agreements that the Board of Directors may by resolution require him to sign; and also the minutes of the proceedings of all meetings of the Association and of the Directors; he shall have the custody of the bonds of all the officers and employees, except his own, which shall be filed with the Secretary.

In the absence of the President, the Vice-President shall perform the duties of the President.

In the absence of both the President and the Vice-President, the Directors shall appoint a Director to act as presiding officer pro-tempore.

Secretary

Section 3. The Secretary shall keep full and complete minutes of the proceedings of the Association, and of the Directors' meetings, in a proper book; he shall countersign all Certificates of Membership, contracts, conveyances, documents and agreements and generally shall perform all duties pertaining to his office as the Board of Directors may require.

Treasurer

Section 4. The Treasurer shall be appointed by, and shall be subject to, and his duties prescribed by the Board of Directors.

Manager

Section 5. The Manager shall be appointed by, and shall be subject to, and his duties prescribed

Petitioner's Exhibit No. 1 (Continued)
by the Board of Directors; subject to the control of the Directors, he shall have direct control of the business of the Association.

Article VII

Nomination and Election of Directors

Section 1. The regular election of Directors shall [119]

be held on the regular Annual Meeting day of the Association.

Section 2. Special elections shall be held at special meetings called for that purpose.

Section 3. All elections of Directors shall be by ballot and the manner of procedure shall be as follows:

1st. On the third Monday of January of each year the Secretary shall send a list of the names of all the members of the Association residing in each District to each member of the Association residing in that District, together with a notification of the Director or Directors to be elected from that District; the Secretary shall also enclose a nomination blank upon which a member may fill in his, her or its nomination of one member for each Director to be elected, which, to be a valid nomination and entitled to be counted as such must be received by the Secretary of the Association at the general office of the Association on or before the first Thursday of February of that year.

2nd. The Director-at-Large may be elected from among members in any District, and must be nom-

Petitioner's Exhibit No. 1 (Continued)

inated by petition signed by not less than twenty-five (25) members, filed with the Secretary of the Association at least thirty (30) days prior to the date of the annual election of Directors as provided in these By-Laws.

3rd. The Directors shall, at their regular monthly meeting in January of each year, appoint a committee of three members to act as a Nominations Committee.

It shall be the duty of this committee to meet with the Directors on the first Thursday of February of each year and in the presence of the Directors, receive and count the nominations as made by the members through the medium of the nomination ballots, including the nominations for Director-at-Large as determined by the number of properly signed petitions filed with the Secretary, and shall make a correct return of the same to the Directors.

The method and manner of handling the nomination ballots shall be the same as provided elsewhere in these By-Laws for the handling of the election ballots.

4th. Upon the first Thursday of February of each year, the Board of Directors shall convene, receive from the Nominations Committee their [120] report of the result of the nominations as made by the members through the medium of the nomination ballots from each District, together with the nominations for Director-at-Large as determined by the petitions properly signed and filed with the Secre-

Petitioner's Exhibit No. 1 (Continued)

tary, and shall cause the Secretary to have printed a voting ticket for each District containing twice as many names as there shall be Directors to be elected in said District and also containing one blank space for a "write-in candidate"; the names of the nominees to be placed on these voting tickets in each District shall be those having received the highest number of votes as determined by the nominating ballots.

They shall also cause the Secretary to have printed a voting ticket to be sent to all members in all Districts containing the names of those members having been properly nominated for Director-at-Large.

These voting tickets, together with a voting envelope properly numbered to correspond to an alphabetically arranged list of all the members in each District, and addressed to the Secretary of the Association at the office of the Association, shall be mailed to each member as per his, her or its address, as it appears on the records of the Association at least ten (10) days prior to the date fixed for said election; said voting ticket and voting envelope shall show the correct number of votes to which the member receiving said voting ticket shall be entitled; complete and full instructions for voting shall accompany the ballot.

All such voting tickets properly filled out by the members to whom they were sent, and received at the office of the Association in a sealed and numbered envelope furnished by the Association for that

Petitioner's Exhibit No. 1 (Continued)

purpose, on or before the closing of the polls on said election date, shall be delivered to the Election Committee and shall be counted as the vote of the members so voting as though said member were present at the meeting.

5th. In all cases of a legal election of Directors the member or members having received the highest number of votes in the District or Districts from which elected shall be declared to be elected.

6th. At the last regular meeting of the Board of Directors prior to the Annual Election, an election committee of three members, comprising one from each District, none of whom shall [121] be Directors, also three alternates, none of whom shall be Directors, shall be appointed by the Board of Directors.

It shall be the duty of this committee to act as election officers for this election and to conduct said election, canvass the ballots cast and make due return of the result of said election; they shall take charge of all sealed ballots which have been received prior to the opening of the polls and which may be received during the election before the closing of the polls, checking same carefully against the membership list before opening and placing the ballot in the ballot box; they shall keep a complete and correct list of the names of all members voting either in person or by mailed ballot but no ballot shall be received or counted, except it be received in a sealed and numbered envelope provided by the Association for that purpose; the polls shall be

Petitioner's Exhibit No. 1 (Continued)
closed at twelve o'clock noon of the aforesaid Annual Meeting.

Immediately after the closing of the polls, the Election Committee shall proceed openly and in the presence of the Directors to count the ballots and shall make and certify a complete tally of the count, which shall be recorded in the Minute Book of the Association by the Secretary; the Election Committee shall then notify the Board of Directors of the result of the election as determined by the election ballots and shall deliver all of the records to the said Directors of the Association whose business it shall be to see that all such tally sheets and records and ballots cast shall be kept in the office of the Association for three (3) months after the date of the election; it shall further be the duty of the Directors to announce the result of the election as reported by the Election Committee and shall then openly in the meeting declare those Directors to be elected for those Districts and for those terms as shall have been determined by the Election Committee; insofar as the election of Directors is concerned, the foregoing procedure shall be final and shall constitute a legal election of Directors regardless of quorum.

Article VIII

Manner of Conducting Business

General Outline

Section 1. This Association is organized as a non-profit co-operative organization doing business with its members and with non-mem- [122] bers as

Petitioner's Exhibit No. 1 (Continued)
provided in the Articles of Incorporation of this Association.

The "Net Proceeds" shall be such funds as are derived from Overcharges on sales and as are left after all expenses shall have been paid, or provided for, all at the discretion of the Directors.

The "Net Proceeds" resulting from the operation of the business, if any, shall belong to the members and shall be known as "Members' Purchase Credits" and shall be prorated to them in proportion to the amount of business each member has transacted with the Association during the period of time in which said "Members' Purchase Credits" have accumulated.

The Directors, after providing for all necessary overhead and all duly authorized reserves, are authorized to prorate and refund all of the rest of the "Members' Purchase Credits" to the members in proportion to each member's purchases from the Association during the time such "Members' Purchase Credits" shall have accumulated, all in the manner particularly set forth as follows:

Twenty-five (25) per cent thereof to be prorated and paid to the member in cash annually as soon as practical after the close of business at the end of each fiscal year and after the Auditor shall have completed the annual audit and shall have released his report to the Directors; seventy-five (75) per cent thereof to be applied to the creation and maintenance of a "Feed Finance Fund" all as provided for elsewhere in these By-Laws.

Petitioner's Exhibit No. 1 (Continued)
Feed Finance Fund

Section 2. The Directors of the Association shall create and maintain a Feed Finance Fund; this Feed Finance Fund shall be originally authorized in the sum of Sixty Thousand (\$60,000.00) Dollars and shall consist of such amounts as may be deducted from the Members' Purchase Credits as provided in these By-Laws for the creation of this fund.

Certificates bearing interest at the rate of six per cent per annum shall be issued to members representing the deductions from their Members' Purchase Credits for the creation and maintenance of said Feed Finance Fund and the retirement of the certificates thereof; said certificates shall be numbered in the order of their issuance and shall be issued in denomina- [123] tions of not less than Ten (\$10.00) Dollars and shall be issued annually commencing January 1, 1935.

From time to time, said certificates shall be retired after the aggregate value of the assets in the Feed Finance Fund thus created shall have amounted to the sum of Sixty Thousand (\$60,000.00) Dollars, or such larger sum to which the said Feed Finance Fund may be increased; said certificates shall be retired in the order in which they were issued, save and except that the Board of Directors may accelerate the retirement of any certificate for good and sufficient cause.

Members' Egg Pool

Section 3. The Directors may, if the members so

Petitioner's Exhibit No. 1 (Continued)

desire, form a pool for the handling of the members' eggs; in the handling of such pool the members are to receive the entire proceeds of sale of such eggs, less the actual cost of grading, casing, processing and transportation or brokerage or any other actual cost, either for material, labor or anything else in the way of expenses in the handling, storing or marketing of such eggs, including an amount sufficient to cover the proper portion of interest on Advance Fund Certificates and properly authorized reserves.

The Association may also deduct not to exceed one (1) cent per dozen from each dozen eggs marketed through said pool; such deductions are to be known as "Members' Egg Pool Credits" and are to be credited and applied to the creation and maintenance of an Advance Fund of the Association, or the retirement of the certificates thereof, and the Association is to issue and deliver to the members participating in such pool, Advance Fund Certificates representing such deductions, providing for interest at six (6) per cent per annum; such certificates to be issued in denominations of not less than Ten (\$10.00) Dollars and to be issued semi-annually beginning June 3, 1925.

Advance Fund

Section 4. The Directors of the Association shall create and maintain an Advance Fund; this Advance Fund shall be originally authorized in the sum of Sixty Thousand (\$60,000.00) Dollars and shall consist of such amounts as may be deducted from the

Petitioner's Exhibit No. 1 (Continued)

"Members' Egg Pool Credits," as provided in these By-Laws for the creation of this fund. [124]

Certificates bearing interest at the rate of six (6) per cent per annum shall be issued to members representing the deductions from their "Members' Egg Pool Credits" for the creation and maintenance of said Advance Fund and the retirement of the certificates thereof; said certificates shall be numbered in the order of their issuance and shall be issued in denominations of not less than Ten (\$10.00) Dollars and shall be issued semi-annually commencing June 3, 1925.

From time to time, said certificates shall be retired after the aggregate value of the assets in the Advance Fund thus created shall have amounted to the sum of Sixty Thousand (\$60,000.00) Dollars or such larger sum to which the said Advance Fund may be increased; said certificates shall be retired in the order in which they were issued, save and except that the Board of Directors may accelerate the retirement of any certificate for good and sufficient cause.

Members' Small Balances

Section 5. All balances of less than Ten (\$10.00) Dollars for which certificates may not be issued, standing to the credit of any member, either in the "Members' Purchase Credits" record or "Members' Egg Pool Credits" record shall be remitted to such members in cash, or if after proper notices shall have been sent and no reply received, then by resolution of the Directors transferred to the General

Petitioner's Exhibit No. 1 (Continued)

Fund of the Association, provided however, that such remittance in cash or such transfer to the General Fund of the Association shall not be made until after all "Feed Finance Fund" certificates and/or "Advance Fund" certificates of an even or earlier year date shall have been called for redemption to the Association, and provided further that such transfer to the General Fund of the Association shall not be made until after two (2) notices six (6) months apart shall have been sent to the member as his, her or its address shall appear on the records of the Association at date of such notice.

Funds May Be Increased

Section 6. The aggregate amount of the Feed Finance Fund and/or the Advance Fund may be increased at any meeting of the members by a majority vote of the members, providing that in the call for such meeting notice shall have been given of the amount to which [125] it shall be proposed to increase said Feed Finance Fund or Advance Fund.

Membership Fund

Section 7. All moneys received from membership fees shall constitute the Membership Fund, which fund shall not be reduced except when returned to members upon withdrawal or loss of membership as provided in these By-Laws; it may, however, be invested in lands, buildings or equipment necessary for the operation of the business of the Association, or it may be used as working capital in carrying on the business of the Association, in-

Petitioner's Exhibit No. 1 (Continued)

cluding the retirement of Feed Finance Fund certificates or Advance Fund Certificates of the Association, or in payment of small balances standing to the credit of members in the "Members' Purchase Credits" record and "Members' Egg Pool Credits" record, all as provided for elsewhere in these By-Laws, and all at the discretion of the Directors.

Reserve Fund

Section 8. There shall be reserved out of the earnings of the business of the Association each year, ten (10) per cent of the net earnings for a Reserve Fund for security of the Membership Fund; such amount shall be computed annually, deducted after all other deductions for interest, overhead and operating expenses have been made and before "Members' Purchase Credits" have been prorated.

Any moneys in this Reserve Fund or in any other Fund may be invested in property belonging to the Association, in outside securities, or used as a working capital in the operation of the business, or used in the payment and retirement of the Feed Finance Fund Certificates and/or Advance Fund Certificates of the Association, or in payment of small balances standing to the credit of members in the "Members' Purchase Credits" record and in the "Members' Egg Pool Credits" record, all as provided for elsewhere in these By-Laws and all at the discretion of the Directors.

Moneys May Be Used

Section 9. Any moneys in the Feed Finance

Petitioner's Exhibit No. 1 (Continued)

Fund or in the Advance Fund or any reserve fund may be invested in lands, buildings, equipment or anything necessary for the proper operation of the business, or it may be used as a working capital in the operation of the business of the Association, and also may be used [126] in the retirement of "Feed Finance Fund" Certificates and/or "Advance Fund" Certificates or in payment of small balances standing to the credit of members in the "Members' Purchase Credits" record or the "Members' Egg Pool Credits" record, all as provided for elsewhere in these By-Laws and all at the discretion of the Directors.

May Purchase from Members or Non-Members

Section 10. The Directors, may, if they deem it advisable and the members desire, form a pool for the handling of poultry or other agricultural products produced by the members or they may, if they deem it advisable, purchase for cash or handle on consignment poultry or other agricultural products produced by members or non-members.

In the handling of any product, whether purchased for cash or handled on consignment or through a pool or otherwise by the Association, the Directors, subject to statute and these By-Laws shall have full power of control.

Lien

Section 11. The Association shall have a first lien upon all funds, property, property rights and interests in the Association however evidenced or

Petitioner's Exhibit No. 1 (Continued)

certified, and upon any amounts payable to the members for marketing returns or otherwise, to the extent of any amount that the member may be indebted or obligated to this Association on any account or accounts, claim or claims, whatsoever, liquidated or otherwise. The Lien may be enforced through the immediate application of any cash or credit held by the Association for the member or by sale of interest or membership after ten (10) days' notice in writing served upon the member as provided in these By-Laws for service of notice of meeting. All sales of membership or interest shall be made at the office of the Association in Porterville, California, by the Secretary or other person designated by the President of the Association, without other or further formality or notice. The Association may be or become a purchaser at such sale.

Article IX

Liquidation

Section 1. If at the end of the period for which this Association is organized the members do not elect to continue the Association, or if [127] at any other period prior thereto the members shall elect to discontinue the operation of the business of the Association, the Directors with the consent of two-thirds ($\frac{2}{3}$) of the members of the Association, shall sell the assets and property of the Association, and shall apply the proceeds upon the indebtedness and liabilities of the Association in the following order of priority:

Petitioner's Exhibit No. 1 (Continued)

1st. They shall pay all indebtedness and liability of the Association other than that represented by the Feed Finance Fund, the Advance Fund and the Membership Fund.

2nd. If, thereafter, there shall be any remainder, and only in such event, they shall pay pro-rata the holders of Feed Finance Fund Certificates and Advance Fund Certificates not to exceed the face value thereof, together with all accrued interest.

3rd. If, thereafter, there shall be any remainder, and only in such event, they shall divide and pay in equal amounts to each member of the Association an amount not to exceed the face value of the Membership Certificates.

4th. If, thereafter, there shall be any remainder, and only in such event, they shall pay pro-rata to the members holding Feed Finance Fund Certificates and Advance Fund Certificates outstanding all of the balance of the assets of the Association; such payments shall be prorated to the members in accordance with the amount of purchases from the Association made by each member during the period in which such Feed Finance Fund Certificates and Advance Fund Certificates shall have accumulated.

Article X

Credits

Section 1. It shall be the aim of this Association to conduct its business as nearly as possible, consistent with best business methods, on a cash basis; all open accounts shall become due and pay-

Petitioner's Exhibit No. 1 (Continued)

able on the first of the month following the date of entry upon the books of the Association, unless by special arrangement; as a safeguard against the extension of undesirable credits, or the carrying of insecure accounts, it shall be the duty of the Directors to require an itemized statement of all accounts receivable to be rendered on the first of each month showing each account divided into thirty day, sixty day and ninety day or older amounts, which statement shall be carefully checked by them each [128] month, and they shall order the discontinuance of or the forced collections of any and all accounts deemed necessary for the safety or best interest of the Association.

Article XI

Fiscal Year

The fiscal year for this Association shall begin January 1st and end December 31st of each year.

Article XII

By-Laws May Be Amended

These By-Laws may be altered or amended at any Annual Meeting of the Association or at any other meeting of the members called for that purpose, by an affirmative vote of a majority of all the members, or the written assent of a majority of all the members shall be effectual to amend or to repeal any By-Laws or to adopt any additional By-Laws without any meeting.

[Endorsed]: U. S. B. T. A. Filed June 24, 1941.

PETITIONER'S EXHIBIT No. 3

RESOLUTION

Patronage Dividend to Members and Non-Members
Alike

Resolved, that any and all patronage dividends authorized to be paid by the San Joaquin Valley Poultry Producers Association for the year 1936 shall apply equally to members and non-members alike, and, be it further,

Resolved, that any such patronage dividend to members who joined during the year shall be made retroactive on all purchases for the full year and that such dividends to non-members shall be paid in cash or its equivalent before the closing of the books of the Association as of December 31st, 1936, and be it further,

Resolved, that the officers and employees in charge of the books and records of the Association be and are hereby authorized and instructed to carry out the provisions of this Resolution.

The above Resolution unanimously adopted on motion of Director Webb, seconded by Director Arkley this 21st day of December, 1936.

Attest.....

Secretary.

[Endorsed]: U. S. B. T. A. Filed Jun. 24,
1941. [130]

PETITIONER'S EXHIBIT No. 4

Marketing Division

RESOLUTION

Setting Up Reserve Against
Loss by Overpayment for Eggs.

Whereas, retains from proceeds of sale of members eggs, marketed by the San Joaquin Valley Poultry Producers Association, have accumulated during the year of 1936, in the amount of \$1683.56, and,

Whereas, experience has taught that it is not always possible to make final disposition of all products immediately after delivery, nor is it always possible to avoid taking some loss due to market fluctuations, deterioration, carrying charges and unexpected expenses, therefore, be it,

Resolved, that the amount of \$1683.56, be and is hereby ordered to be set up as a reserve for Protection Against Loss by Overpayment for Eggs, and be it,

Further Resolved, that the officers and employees in charge of the books and records of the Association be and are hereby authorized and instructed to carry out the provisions of this Resolution.

The above Resolution adopted at an adjourned meeting of the Board of Directors, a quorum being present, of the said San Joaquin Valley Poultry

Producers Association held this 31st day of December, 1936.

Attest.....

Secretary.

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941. [131]

PETITIONER'S EXHIBIT No. 5

Purchasing Division

RESOLUTION

Patronage Dividend

Whereas, the business of the San Joaquin Valley Poultry Producers Association for the year 1936, according to the auditor's finding, shows, after deducting and setting up necessary reserves for Depreciation and Bad Debts, net overcharges of \$22,152.94, and,

Whereas, this amount is sufficient to allow for a patronage dividend of 2% of all purchases in addition to authorized necessary reserves, now, therefore be it,

Resolved, that a Patronage Dividend in the amount of \$14,214.93, shall be and is hereby declared and ordered to be pro-rated as follows: 1st: 2% of all purchases by members during said year, amounting to Eleven Thousand Seven Hundred Twenty-Five and 75/100, (\$11,725.75) Dollars to be paid to members in the usual way as authorized by the by-laws and resolution of directors.

2nd: 3½% of all purchases by non-members during said year, amounting to Two Thousand Four

Hundred Eighty-Nine and 18/100 (\$2489.18) Dollars, same being 2% of purchases plus an amount equaling in percentage the amount carried to reserves for account of members, same to be paid in cash or its equivalent to each such non-member prior to the closing of the books of the Association for the said year of 1936, and, be it further,

Resolved, that the officers and employees in charge of the books and records of the Association be and are hereby authorized and instructed to carry out the provisions of this Resolution.

The above Resolution adopted at an adjourned meeting of the Board of Directors, a quorum being present, of the said San Joaquin Valley Poultry Producers Association held this 31st day of December, 1936.

Attest.....

Secretary.

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941. [132]

PETITIONER'S EXHIBIT No. 6

Purchasing Division

RESOLUTION

Setting Up Reserve for Zoning Hazard

Whereas, the Zoning Hazard still exists which prompted the setting up of a Reserve for this purpose, now, therefore be it,

Resolved, that the sum of \$5722.72, be and is hereby ordered transferred from the Operating

Account to the said Reserve for a Zoning Hazard, and, be it further,

Resolved, that the proper officers be and are hereby authorized and instructed to have the provisions of this Resolution properly executed.

The above Resolution adopted at an adjourned meeting of the Board of Directors, a quorum being present, of the said San Joaquin Valley Poultry Producers Association held this 31st day of December, 1936.

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941. [133]

PETITIONER'S EXHIBIT No. 7

Purchasing Division

RESOLUTION

Reserve for Security of Membership Fund

Whereas, the business of the San Joaquin Valley Poultry Producers Association for the year 1936, after deducting Reserves for Depreciation and Bad Debts, according to the auditor's reports, shows net overcharges of \$22,152.94, and,

Whereas, the By-Laws of the said Association provide that 10% of the net earnings each year must be set aside as a Reserve for the Security of the Membership Fund before any Patronage Dividend may be pro-rated to the members, now, therefore be it,

Resolved, that the sum of \$2215.29, being 10% of such overcharges shall be transferred from the Op-

erating account in the records of the Association to the Reserve for the Security of the Membership Fund account, and, be it further

Resolved, that the officers and employees in charge of the books and records of the Association be and are hereby authorized and instructed to carry out the provisions of this Resolution.

The above Resolution adopted at an adjourned meeting of the Board of Directors, a quorum being present, of the said San Joaquin Valley Poultry Producers Association held this 31st day of December, 1936.

Attest.....

Secretary.

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941. [134]

PETITIONER'S EXHIBIT No. 8

Puchasing Division
&
Marketing Division

RESOLUTION

Whereas, this association is organized and operated as a non-profit cooperative association; and

Whereas, the manner of conducting the business of the association is set forth in Article VIII of the by-laws; it being thereby provided in effect that

members and patrons shall receive for their products handled by the association the proceeds of sales thereof less costs and expenses of the association attributable to its marketing business, including deductions for authorized reserves, and that members and patrons shall be furnished with supplies at cost plus costs and expenses of the association attributable to its purchasing business, including retentions for authorized reserves; and

Whereas, it has heretofore been the practice of this association and it is the intention of this association that the individual members and patrons shall be credited on the books of the association with their pro-rata shares—i.e. in proportion to the amount of business done with the association—of any amounts retained by the association which do not represent valuation reserves or other costs and expenses of the association's doing business, and that such credits shall be paid to the members and patrons to whom credited, when, as, and if the board of directors of the association determines that the association has available funds therefor not to be needed for the use of the association;

Now, Therefore, Be It Resolved, that the accountant and auditors of this association be and they are hereby authorized and directed to determine for the year ending December 31, 1937, the amounts allocable as credits to the individual accounts of the patrons and members of this association in accordance with the foregoing, and to record such credits upon the books of the association;

Be It Further Resolved, that this association does hereby recognize the obligation to repay said credits in the manner heretofore [135] set forth.

The above Resolution adopted at an adjourned meeting of the Board of Directors, a quorum being present, of the said San Joaquin Valley Poultry Producers Association held this 31st day of December, 1937.

Attest.....

Secretary.

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941. [136]

PETITIONER'S EXHIBIT No. 9

Purchasing Division

RESOLUTION

Reserve for Security of Membership Fund

Whereas, the business of the San Joaquin Valley Poultry Producers Association for the year 1937, after deducting Reserves for Depreciation and Bad Debts, according to the auditor's reports, shows net overcharges of \$26,019.01, and,

Whereas, the By-Laws of the said Association provide that 10% of the net earnings each year must be set aside as a Reserve for the Security of the Membership Fund before any Patronage Dividend

may be pro-rated to the members, now, therefore be it.

Resolved, that the sum of \$2,601.90, being 10% of such overcharges shall be transferred from the Operating Account in the records of the Association to the Reserve for the Security of the Membership Fund account, and, be it further,

Resolved, that the officers and employees in charge of the books and records of the Association be and are hereby authorized and instructed to carry out the provisions of this Resolution.

The above Resolution adopted at an adjourned meeting of the Board of Directors, a quorum being present, of the said San Joaquin Valley Poultry Producers Association held this 31st day of December, 1937.

Attest:

Secretary.

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941.
[137]

PETITIONER'S EXHIBIT No. 10

Purchasing Division

RESOLUTION

Patronage Dividend

Whereas, the business of the San Joaquin Val-

ley Poultry Producers Association for the year 1937, according to the auditor's findings, shows, after deducting and setting up necessary reserves for Depreciation and Bad Debts, net overcharges of \$26,019.01, and

Whereas, this amount is sufficient to allow for a patronage dividend of 2% of all purchases in addition to authorized necessary reserves, now, therefore be it,

Resolved, that a Patronage Dividend in the amount of \$18,058.65 shall be and is hereby declared and ordered to be pro-rated as follows: 1st: 2% of all purchases by members during said year, amounting to Seventeen Thousand Nine Hundred Twenty-four and 32/100 (\$17,924.32) Dollars to be paid to members in the usual way as authorized by the by-laws and resolution of directors. 2nd: 2.87% of all purchases by non-members during said year, amounting to \$134.33, the same being 2% of purchases plus an amount equaling in percentage the amount carried to reserves for account of members, same to be paid in cash or its equivalent to each non-member prior to the closing of the books of the Association for the said year of 1937, and, be it further,

Resolved, that the officers and employees in charge of the books and records of the association be and are hereby authorized and instructed to carry out the provisions of this Resolution.

The above Resolution adopted at an adjourned meeting of the Board of directors, a quorum being present, of the Said San Joaquin Valley Poultry Producers Association held this 31st day of December, 1937.

Attest:

Secretary.

[Endorsed]: U. S. B. T. A. Jun. 24, 1941. [138]

PETITIONER'S EXHIBIT No. 11

Purchasing Division

RESOLUTION

Setting Up Reserve for Zoning Hazard

Resolved, that the sum of \$9,657.81, be and is hereby ordered transferred from the Operating Account to the Reserve for Zoning Hazard, and, be it further,

Resolved, that the proper officers be and are hereby instructed and authorized to have the provisions of this Resolution properly executed.

The above Resolution adopted at an adjourned meeting of the Board of Directors, a quorum being present, of the said San Joaquin Valley Poul-

try Producers Association held this 31st day of December, 1937.

Attest:

Secretary.

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941.

[139]

PETITIONER'S EXHIBIT No. 12

San Joaquin Valley Poultry Producers Association
Porterville, California

Dear Member:

Enclosed herewith find your membership certificate, a copy of P.P.A. sales policy and a copy of P.P.A. By-Laws. Your membership entitles you to all of the benefits accruing to members of this association. Some of these benefits are:

Members' Feed Purchasing Service: Feeds and supplies are sold to all members at the same retail price in effect at time of sales. Any difference between delivered prices and actual cost of goods, plus operating expenses, belongs to the members. At the end of each year such differences, in cooperative parlance called Retains, are pro-rated to members, in proportion to their purchases as follows:

1st, each members' portion of all authorized reserves (set up for the protection of the business) is credited to him in his Members' Purchase Record and notice sent him periodically.

2nd, each member's portion of any dividends de-

clared is given to him direct, 25% in cash and 75% in an interest bearing certificate. In the Members' Purchase Record a complete record is kept, not only of all of each members purchases, but of his interest in all Retains, whether distributed in cash or certificates or whether retained for future distribution.

Egg Marketing Service. Through our egg pool we market members' eggs for them on a federally inspected and graded basis returning to them the entire proceeds of sale, less all marketing expenses. In order to do this we must have all eggs of a uniform high quality and all members must conform to the rules and regulations governing the operation of the pool. We have men specially trained in the care of eggs and, if at any time you find that your eggs do not measure up to the standard required, we will be glad to have them call on you and assist you in every way possible.

Poultry Husbandry Service. We have men specially trained to assist you in your feeding problems and anything connected with poultry husbandry. If at any time you need help in this or any other line, don't hesitate to call on us.

We certainly are glad to welcome you into our Association. We will do our best to serve you so that you too may become another of the hundreds of satisfied cooperators. The old saying that, "In unity there is strength" was never more applicable to anything than to our own little group. You are now one of us. P.P.A. business is your business now. You and the other members own it. It is

to your interest to protect it and help it as much as it is to protect your own private business on your own farm Come to the office and get acquainted The latch string is always out to you. We hope to know you better and see you often.

Yours very truly,

S. J. V. POULTRY PRODUC-
ERS ASSOCIATION,

By W. B. ROBY,

General Manager.

WBR:JR

Enc. 3.

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941.

[140]

PETITIONER'S EXHIBIT No. 13

G. BOSIACK

Security of Members		Contingencies		Zoning Hazard		Average of Eggs and Pity.	
Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
12-31-31	1.83		7.42				
12-31-32		2.70					
12-31-34	1.82						
12-31-35	3.23		.41		12.60		5.49
12-31-36	3.53				9.13		2.69
12-31-37	3.04				11.29		
12-31-38	2.29						
12-31-39	3.37						
	19.11	2.70	7.83		33.02		8.18
				1939	9.96		
					48.11		

[141]

F. C. BERTKAU

	Security of Members		Contingencies		Zoning Hazard		Average of Eggs and Pltry.	
	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
12-31-29		84.06		413.98				
12-31-34		10.97						
12-31-35		15.37		1.97		60.00		26.16
12-31-36		15.88				41.01		12.07
12-31-37		8.95				33.20		38.23
12-31-38		6.69						
12-31-39		14.02						
		155.94		415.95		134.21		
					1939	41.37		
						591.53		

[142]

C. J. BARTON

	Security of Members		Contingencies		Zoning Hazard		Average of Eggs and Pltry.	
	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
6-30-28		3.03						
12-31-28		5.33						
12-31-29		12.00		59.08				
12-31-30		18.35						
12-31-31		12.68		51.48				
12-31-32			14.85					
12-31-34		5.74						
12-31-35		10.60		1.36		41.40		18.05
12-31-36		11.72				30.27		8.91
12-31-37		11.96				44.41		
12-31-38		6.47						
12-31-39		9.04						
		106.92	14.85	111.92		116.08		26.96
					1939	26.68		
						239.83		

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941.

[143]

PETITIONER'S EXHIBIT No. 14

STATEMENT OF MEMBERSHIP EQUITY

San Joaquin Valley Poultry Producers Association

Account as of December 31, 1939

For G. BORIACK

	Your Association's Total	Your Own Total
Membership Fund Certificates....\$	10,480.00	10.00
Reserved Fund for Security of		
Membership Fund	17,362.54	19.11
Advance Fund Certificate.....	59,880.00	160.00
Members Egg Pool Credits.....	4,373.92	—
Feed Finance Fund Certificates	50,660.00	90.00
Members Purchase Credits.....	5,667.12	1.88
Revolving Fund Retain Credits	39,195.66	48.11
Total.....	\$187,619.24	329.10

[Endorsed]: U. S. B. T. A. Filed Jun. 24, 1941.

[144]

[Title of Board and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON REVIEWTo the Clerk of the United States Board of Tax
Appeals:

You Are Hereby requested to prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, a transcript of the record in the above cause prepared and trans-

mitted as required by law and the rules of said Court, and to include in said transcript of record the following documents or certified copies thereof, to wit:

(1) The docket entries of all proceedings before the Board of Tax Appeals.

(2) The petition before the Board with the Deficiency Notice attached and the Answer thereto.

(3) The findings of fact and the opinion of the Board.

(4) The decision of the Board.

(5) The Petition for Review filed by the Petitioner. [145]

(6) The transcript of the proceedings before said Board on June 24, 1941, together with Exhibits P-1, P-3, P-4, P-5, P-6, P-7, P-8, P-9, P-10, P-11, P-12, P-13, and P-14.

(7) This praecipe.

Dated: August —, 1942.

MILTON D. SAPIRO,
Attorney for Petitioner,
1411 Mills Tower,
San Francisco.

Approved and agreed to this 20th day of August, 1942.

J. P. WENCHEL,
Attorney for Respondent.

[Endorsed]: U. S. B. T. A. Filed Aug. 20, 1942.

[146]

CERTIFICATE OF CLERK TO
TRANSCRIPT OF RECORD

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 146, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Prae-
cipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 26th day of August, 1942.

[Seal] B. D. GAMBLE,

Clerk, United States Board of
Tax Appeals.

[Endorsed]: No. 10246. United States Circuit Court of Appeals for the Ninth Circuit. San Joaquin Valley Poultry Producers Association, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed September 12, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit
Docket No. 10246

SAN JOAQUIN VALLEY POULTRY PRODUC-
ERS ASSOCIATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF ADOPTION OF ASSIGNMENTS
OF ERROR AND STATEMENT OF POINTS
UPON WHICH THE PETITIONER IN-
TENDS TO RELY AND DESIGNATION OF
RECORD

To the Clerk of the United States Circuit Court of
Appeals of the Ninth Circuit:

Notice Is Hereby Given that the San Joaquin Valley Poultry Producers Association, petitioner in the above entitled petition for review, hereby adopts for the purposes of its appeal in the above entitled court, the statement of points upon which the petitioner intends to rely, included with the petition for review heretofore filed with the United States Board of Tax Appeals and said petitioner hereby designates that the entire record certified by the Board to the above entitled court shall be included in the printed transcript.

MILTON D. SAPIRO,

Attorney for Petitioner.

Copy mailed Sep. 16, 1942, to J. P. Wenchel, at-
torney for respondent.

[Endorsed]: Filed Sep. 16, 1942.

